



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 E. Third Avenue  
Williamson, WV 25661

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

September 23, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 24, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your level of care hours from Level "D" to Level "C."

In arriving at a decision, the State Hearings Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Aged/Disabled Waiver program is based on current policy and regulations. These regulations provide that number of homemaker service hours is determined based on the Level of Care (LOC). The Level of Care is determined by evaluating the Pre-Admission Screening Form (PAS) and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units/hours which is reviewed and approved by WVM (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.3).

The information submitted at your hearing revealed that you do not meet the medical criteria required for Level "D" care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker service hours under the Aged and Disabled Waiver Program to Level "C."

Sincerely,

Stephen M. Baisden  
State Hearings Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Kay Ikerd, RN, WV Bureau of Senior Services

-----, [REDACTED] WV

[REDACTED] WV

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

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**Claimant**

v.

**Action Number: 10-BOR-1141**

**West Virginia Department of  
Health and Human Resources**

**Respondent**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 23, 2010 for ----- . This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on June 29, 2010 on a timely appeal filed March 30, 2010.

**II. PROGRAM PURPOSE:**

The Program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health & Human Resources.

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

**III. PARTICIPANTS:**

-----, Claimant  
-----, Claimant's representative  
-----, Claimant's witness and daughter

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative  
Teena Testa, RN, West Virginia Medical Institute (WVMI), Department's Witness

Presiding at the Hearing was Stephen M. Baisden, State Hearing Examiner and a member of the Board of Review.

This Hearing was conducted by telephone conference call.

The Hearing Examiner placed all participants under oath at the beginning of the hearing.

**IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in the decision to reduce Claimant's homemaker hours from a Level "D" to a Level "C."

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Waiver Policy Manual, chapter 501.3.2.1 and chapter 501.3.2.2.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community Based Services Waiver Policy Manual Chapter 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) Form dated March 10, 2010
- D-3 Notice of Decision dated March 15, 2010

**VII. FINDINGS OF FACT:**

- 1) Department's representative read into the record the applicable policy for this hearing. (Exhibit D-1.) Aged/Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and 501.3.2.2 states:

There will be four levels of care for clients of ADW homemaker services. Points will be determined based on the following sections of the PAS:

- #23- Medical Conditions/Symptoms - 1 point for each (can have total of 12 points)
- #24- Decubitis- 1 point
- #25- 1 point for b., c., or d.
- #26- Functional abilities
  - Level 1- 0 points
  - Level 2- 1 point for each item a. through i.

Level 3- 2 points for each item a. through m.; i. (walking) must be equal to or greater than Level 3 before points are given for j. (wheeling)

Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.

#27- Professional and Technical Care Needs- 1 point for continuous oxygen

#28- Medication Administration- 1 point for b. or c.

#34- Dementia- 1 point if Alzheimer's or other dementia

#35- Prognosis- 1 point if terminal

Total number of points possible is 44.

### **LEVELS OF CARE SERVICE LIMITS**

Level A- 5 points to 9 points; 2 hours per day or 62 hours per month

Level B- 10 points to 17 points; 3 hours per day or 93 hours per month

Level C- 18 points to 25 points; 4 hours per day or 124 hours per month

Level D- 26 points to 44 points; 5 hours per day or 155 hours per month

- 2) Department's witness testified that she scheduled a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant, and conducted it on March 10, 2010. (Exhibit D-2.) Claimant was awarded a total of 25 points on the PAS and was approved for Level C of care. WVMJ communicated its decision to Claimant in a Notice of Decision dated March 15, 2010. (Exhibit D-3.)
- 3) Claimant's representative testified that Claimant should have received two more points on her PAS. She stated Claimant should have received an additional point on item #26, Functional Abilities, for item d, grooming. Claimant was assessed at Level 2 (physical assistance) and received one point. She stated that Claimant should have been assessed at Level 3 (total care) and should have received two points. Claimant's representative further stated Claimant should have received one more point at item #26, Functional Abilities, for item i, walking. Claimant was assessed at Level 2 (supervised/assistive device) and received one point. She stated that Claimant should have been assessed at Level 3 (one person assist) and should have received two points.

**Grooming** – Claimant's representative testified that on most days, Claimant cannot comb or brush her hair, and that is the only area of grooming in which she is able to assist. She stated that she has to comb, wash, brush and style Claimant's hair. She added that anything that is done to Claimant's hair has to be done by caregivers. Department's witness testified that during the PAS, Claimant's witness told her that Claimant could brush her hair. Department's

witness added that she reviewed the results of her assessment with Claimant and Claimant's witness before she left the home, and they agreed with her documentation.

**Walking** – On the March 10 PAS, the reviewer assessed Claimant's walking functional level as Level 2, and awarded one point toward Claimant's level of care determination. The nurse reviewer wrote in the "Overall Comments" or narrative section, "[Claimant] was sitting in her recliner chair. She was able to put the foot rest down on her chair. She scooted to the edge of her chair and stood up . . . She did walk toward the bathroom and back. She held onto the door facing and turn [*sic*] around and walked back. She notes she knows her limitations as far as walking. She states if she feels like her legs are going to give out on her, she makes her way back to her chair and sits down." Claimant's representative testified that Claimant has a diagnosis of multi-infarct (areas of brain tissue death due to lack of oxygen) and as such she did not have the ability to understand her limitations in regards to walking. Department's witness testified that she did observe Claimant's actions as stated above, and she reiterated that she reviewed the results of the PAS with Claimant and Claimant's witness, who agreed with her documentation.

Claimant and her representative offered no substantial medical evidence to support their contention that Claimant should have received more points on her PAS than she was originally awarded.

- 4) Claimant's representative testified that her level of care should remain at "D" because she needed more assistance than a "C" level of care. She stated that the PAS did not accurately reflect Claimant's functional abilities, particularly in the area of walking. She stated that the PAS does not address any other factors that may be involved in her ambulation or whether her various diagnoses affects how she walks. She added that she felt Department's witness should have relied more on interviewing than on Claimant's demonstration of her walking abilities.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points obtained on the PAS assessment tool. The Claimant was awarded 25 points as the result of a PAS completed by WVMI in March 2010.
- 2) No additional PAS points for grooming will be awarded because Claimant's witness and daughter told the nurse reviewer that Claimant brushed her hair.
- 3) No additional PAS points for walking will be awarded because Department's witness correctly assessed Claimant at Level 2, supervised walking with assistive

device, based on the nurse reviewer's interview with and observations of Claimant during the PAS.

- 4) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 25 points. She meets the medical criteria required to receive a Level C of care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to reduce Claimant's level of care under the Aged and Disabled Waiver Program from Level "D" to Level "C".

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 23<sup>rd</sup> day of September 2010.**

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**Stephen M. Baisden  
State Hearing Officer**