



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

May 19, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 14, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to approve you for homemaker hours at a Level B care instead of 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 C care.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to award homemaker hours as a Level B.

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]

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

-----,

**Claimant**

v.

**Action Number: 09-BOR-2232**

**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 May 19, 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 March 18, 2010 on a timely appeal, filed November 17, 2009.

**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

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 Claimant's homemaker hours were correctly rated at a "B" level of care.

**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 October 29, 2009
- D-3 Notice of Decision dated November 13, 2009
- D-4 Additional medical information received from Claimant's primary care physician, [REDACTED] D.O., on November 9, 2009

**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 completed a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program on October 29, 2009. (Exhibit D-2.) The PAS item #23 lists twelve medical conditions and/or symptoms, each of which is worth one point on the evaluation. Claimant was given six evaluation points for item #23, for dyspnea, significant arthritis, paralysis, pain, contractures and other. Other was identified as polio. Claimant received one point for item #25, ability to vacate a building. Item #26 lists 13 areas for the evaluator to assess functional levels in various life skills, and assigns points based on the functional level of each skill. Claimant received one point each in the areas of eating, bathing and grooming, and two points each for dressing, transferring, and walking, for a total of nine points. Claimant was given one point for item #27, professional and technical needs. Claimant was awarded a total of 17 points on the PAS and was approved for Level B care. WVMi communicated its decision to Claimant in a Notice of Decision dated November 13, 2009. (Exhibit D-3.)
- 3) Claimant testified that she should have received one more point on her PAS, for item number 28, the ability to administer her own medications. She stated that her caregiver must remind her to take her medications by bringing them to her in a dispensing cup, then by placing them in her hand. She stated that she is not able to

Medication Administration: [Claimant] DENIES NEEDING ANY ASSISTANCE WITH HER MEDICATIONS. DENIES NEEDING TO BE REMINDED TO TAKE HER MEDS.

Claimant replied that she did not go into detail as to her method of taking her medications. She added that her caretaker at the time is no longer her caretaker, and after her caretaker left, she realized how much she did need help in this area.

- 4) Department's representative submitted into evidence a statement from Claimant's physician, [REDACTED] D. O., dated November 11, 2009. (Exhibit D-4.) This statement verified Claimant's diagnoses from item #23 of the PAS. The statement also reports, "[Claimant] takes pain medication, needs prompting and supervision of meds." Department's witness wrote in PAS narrative section, the final version of which was completed on November 13, 2009, as follows:

RECEIVED ADDITIONAL DOCUMENTATION FROM DR. CRANDALL STATING . . . [Claimant] NEEDS PROMPTING AND SUPERVISION OF MEDICATIONS . . . CLIENT WAS ASK [sic] IN THE INTERVIEW IF SHE NEEDED ANY ASSISTANCE WITH HER MEDICATIONS OR IF SHE NEEDED TO BE REMINDED TO TAKE HER MEDICATIONS AND SHE STATES SHE DOES NOT NEED ANY HELP WITH HER MEDICATIONS. WILL LEAVE MEDICATIONS AS IS FOR NOW.

- 5) Claimant testified that four hours per day (Level of Care B, 93 hours per month) is not enough time to take care of her properly, to prepare her meals and to get her ready for bed in the evenings. Neither Claimant nor her witness presented any medical evidence that would substantiate the awarding of more points on Claimant's PAS.

### **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 17 points as the result of a PAS completed by WVMi in October 2009.

- 2) No PAS points for medication administration will be awarded because Claimant testified that she told Department's witness during the October 2009 PAS that she did not need any assistance with taking her medications. She denied needing to be reminded to take her medications. Claimant's caretaker, who was present at the time, did not contradict this statement. The nurse reviewer was correct in giving less weight to the statement from Claimant's physician than Claimant's assertion made at the time the PAS was conducted that she could administer her own medications. It is reasonable to assume that Claimant was in a better position at that time to assess her own abilities.
- 3) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 17 points. She meets the medical criteria required to receive a Level B of care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to award Claimant Level B care.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 19<sup>th</sup> day of May 2010.**

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**Stephen M. Baisden  
State Hearing Officer**