



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

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 11, 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 WVMH (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-2242

**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 11, 2010 on a timely appeal, filed November 6, 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

-----, Claimant's Representative and Daughter

Cecilia Brown, RN, WV Bureau of Senior Services, Department's Representative
Isabel Bukac, 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 Aged/Disabled Waiver Program Medical Necessity Evaluation Request dated September 21, 2009
- D-3 Pre-Admission Screening (PAS) Form dated November 4, 2009
- D-4 Notice of Decision dated November 6, 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, Isabel Bukac, RN, of the West Virginia Medical Institute (WVMI) testified that her agency received a Medical Necessity Evaluation Request on September 21, 2009, from Claimant's primary care physician. (Exhibit D-2.) Based on this request, she scheduled a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant, and completed it on November 4, 2009. (Exhibit D-3.) The PAS item #23 lists twelve medical conditions and/or symptoms, each of which is worth one point on the evaluation. Claimant was given three evaluation points for item #23, for pain, mental disorder and other. Other was identified as GERD, or gastro esophageal reflux disease. 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 in the area of eating because he requires physical assistance to cut up and eat his food and was assessed at Level 2. Claimant received one point in the area of bathing because he requires physical assistance to get into and out of the shower, and to wash his back and extremities. He was assessed at Level 2. Claimant received one point in the area of dressing because he requires physical assistance to fit his limbs through his shirt sleeves and pants legs. He was assessed at Level 2. Claimant received one point in the area of grooming because he requires physical assistance to clip his finger- and toenails, to shave himself, and to brush his teeth. He was assessed at Level 2. Claimant received one point in the area of bladder continence because he requires a catheter. He was assessed at Level 4. Claimant received one point in the area of bowel continence because he is incontinent. He was assessed at Level 3. Claimant received one point

in the area of transferring because his family had to supervise him getting into and out of chairs and his bed and on and off the toilet. He also used a cane to help himself. He was assessed at Level 2. Claimant received one point in the area of walking because his family had to supervise him ambulating around his home, and he used a cane. He was assessed at Level 2. He received a total of eight points for item #26. Claimant received one point for item #28, ability to administer his medications. Claimant received one point for item #35, a terminal prognosis. Claimant was awarded a total of 14 points on the PAS and was approved for Level B care. WVMI communicated its decision to Claimant in a Notice of Decision dated November 6, 2009. (Exhibit D-4.)

- 3) Claimant's daughter and representative testified that Claimant should have received six more points on his PAS at item #26, functional abilities. She stated that Claimant should have received more points for bathing, dressing, grooming, bladder continence, walking and transferring.

Bathing – Claimant's representative testified that she has to help her father into and out of the bathtub each time he takes a bath. On the November 4, 2009 PAS, the nurse reviewer wrote, "THE MEMBER'S HM [home-maker] PHYSICALLY ASSIST HIM INTO THE SHOWER AND WASHES HIS LOWER EXTREMITIES AND BACK. THE MEMBER CAN WASH HIS FRONT AND FACE." Claimant was assessed as level 2, physical assistance, and awarded one point. In order to receive an additional point for bathing, he would require total care and would not be able to bathe himself at all.

Dressing – Claimant's representative testified that she has to dress Claimant; he cannot put on or remove his clothes or shoes. On the November 4 PAS, the reviewer wrote, "THE HM PHYSICALLY ASSISTS HIM WITH GETTING HIS CLOTHES ON. SHE HELPS [Claimant] FEED HIS ARMS THROUGH THE SLEEVES OF HIS CLOTHES." Claimant was assessed as level 2, physical assistance, and awarded one point. In order to receive an additional point for dressing, he would require total care and would be able to put on a single article of clothing.

Grooming – Claimant's representative testified that she has to shave Claimant, clip his finger- and toenails, and she has to put toothpaste on his toothbrush in order for him to brush his teeth. On the November 4 PAS, the reviewer wrote, "[Claimant's] HM WASHES [Claimant's] HAIR, CUTS HIS NAILS, AND SHAVES HIM. [Claimant] IS ABLE TO BRUSH HIS OWN TEETH." Claimant was assessed as level 2, physical assistance, and awarded one point. In order to receive an additional point for grooming, he would

require total care and would not be able to groom himself at all. He would not be able to brush his own teeth.

Bladder Continence – Claimant’s representative testified that he has to catheter himself. On the November 4 PAS, the reviewer wrote, “[Claimant] IS INCONTINENT OF BOWEL AND BLADDER 5-6 TIMES PER WEEK. HE DOES SELF-CATH . . . BUT ALSO HAS ACCIDENTS.” Department representative testified that he was rated at Level 4, which is the highest level awardable for this functional ability, but which carries only one point.

Transferring – Claimant’s representative testified that Claimant has a lot of trouble transferring, also due to the weakness of his legs. On the November 4 PAS, the reviewer wrote, “[Claimant] PUSHES OFF OF FURNITURE TO TRANSFER FROM HIS CHAIR.” Department’s witness added that she observed him transferring with assists, and awarded him one point. In order to receive additional points for transferring, at least one person would have to help him every time he transferred from his bed, a chair, or the toilet.

Walking – Claimant’s representative testified that Claimant has a lot of trouble walking due to weakness in his legs. She stated that she or another family member has to watch him when walking because he is at risk for falling. On the November 4 PAS, the reviewer wrote, “[Claimant] AMBULATES WITH A CANE. HIS GAIT IS SLOW, UNSTEADY AND UNBALANCED.” Department’s witness testified that she observed him walking with a cane, and awarded him one point for walking with assists. In order to receive additional points for walking, at least one person would have to help him every time he tried to walk.

Claimant’s representative offered no substantial medical evidence to support her contention that Claimant should have received more points on his PAS than he was awarded originally.

- 4) Claimant’s representative testified that Claimant’s level of care should remain at “C” because he needed the assistance. She stated that his condition is deteriorating due to the progression of his medical condition.

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 14 points as the result of a PAS completed by WVMi in September 2009.

- 2) No additional PAS points for bathing will be awarded because Department's witness correctly assessed him at Level 2, physical assistance.
- 3) No additional PAS points for dressing will be awarded because Department's witness correctly assessed him at Level 2, physical assistance.
- 4) No additional PAS points for grooming will be awarded because Department's witness correctly assessed him at Level 2, physical assistance.
- 5) No PAS points for bladder incontinence will be awarded because Claimant was assessed at Level 4, the highest level awardable, giving him one point on the PAS.
- 6) No additional PAS points for transferring will be awarded because Department's witness correctly assessed him at level 2, supervised/assistive device.
- 7) No additional PAS points for walking will be awarded because Department's witness correctly assessed him at level 2, supervised/assistive device.
- 8) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 14 points. He 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 20th day of May 2010.

Stephen M. Baisden
State Hearing Officer