



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

June 29, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 22, 2011. Your hearing request was based on the Department of Health and Human Resources' proposed reduction of homemaker hours under the Aged and Disabled Waiver Program, based on a level of care determination.

In arriving at a decision, the State Hearing 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.

The Aged and Disabled Waiver (ADW) Program is based on current policy and regulations. One of these regulations specifies that for the ADW Program the number of homemaker service hours is determined based on the level of care. The level of care is determined by evaluating the Pre-Admission Screening (PAS) form and assigning points to documented medical conditions that require nursing services. For an individual to be awarded the level of care designated as level 'C,' a minimum of 18 points must be determined from the PAS. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2)

The information submitted at the hearing revealed that the Department was correct in its determination of your level of care and corresponding homemaker hours.

It is the decision of the State Hearing Officer to **uphold** the Department's determination of homemaker hours under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Brenda Myers, WVMH
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 11-BOR-1070

**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 June 29, 2011 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 22, 2011 on a timely appeal, filed April 6, 2011.

It should be noted that benefits have been continued by the Department.

All persons offering testimony were placed under oath.

II. PROGRAM PURPOSE:

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 witness

-----, Claimant's witness

Kay Ikerd, Department representative

Brenda Myers, Department witness

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its determination of the Claimant's homemaker hours under the Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.2.1 - 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services, dated March 15, 2011
- D-3 Notice of Decision, dated March 28, 2011

VII. FINDINGS OF FACT:

- 1) Claimant is a 60-year old male recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on March 15, 2011 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about March 28, 2011. The notice states, in pertinent part:

You have been determined medically eligible to continue to receive Waiver services.

The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month.

- 3) Policy from Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.2.1 – 501.3.2.2, states, in pertinent part:

501.3.2.1 LEVELS OF CARE CRITERIA

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

Section	Description of Points
#23	Medical Conditions/Symptoms – 1 point for each (can have total of 12 points)
#24	Decubitus – 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 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.

All of the above levels of care criteria information also applies to Personal Options.

503.2.2 LEVELS OF CARE SERVICE LIMITS

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

- 4) On the March 15, 2011, Pre-Admission Screening, or PAS (Exhibit D-2), Brenda Myers – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – assessed 16 points for the Claimant. Five points were awarded for medical conditions and symptoms, one for decubitus, one for vacating, and nine for functional abilities in the home. This point level corresponds to the level of care “B,” and the service limit of 93 hours monthly noted on the decision (Exhibit D-3) issued to the Claimant.
- 5) ----- – the Claimant’s case manager – disputed six areas on the Claimant’s behalf: the medical condition of *arthritis*, *dressing*, *continence of bladder*, *wheeling*, *vision*, and *medication administration*.
- 6) Ms. Myers testified that she attempted to contact the Claimant’s physician to confirm a diagnosis of *arthritis*, but she did not receive a return call. She testified that the Claimant was not prescribed medication for this condition. [REDACTED] testified that the Claimant had changed to a new physician and that Ms. Myers sent her request to the wrong physician. Ms. Myers testified that she was not advised of the physician change during the assessment of the Claimant, and that she did not receive additional information after the assessment to confirm this condition.
- 7) [REDACTED] testified that the Claimant is “total care” – or a Level 3 – for the functional area of *dressing*. Ms. Ikerd testified that the difference between “total care” and “physical assistance” – or a Level 2 – in this area is that an individual must be assessed as requiring physical assistance, and not requiring total care, if they are able to provide any assistance whatsoever in dressing themselves. Ms. Myers testified that the Claimant could assist with dressing by putting his arms through sleeves. Ms. Myers’ comments from the PAS (Exhibit D-2) reiterate this, as follows, in pertinent part:
- Dressing: He states all [sic] he only wears a hospital gown and all he has to do is put his arms through the sleeves and leaves the back untied. If back were to be tied he would need someone to tie back of gown. He states he never wears socks or shoes and occasionally [sic] he will have velcro booties put on his feet and someone will have to put those on for him.
- 8) [REDACTED] testified that the Claimant should have been assessed as “incontinent” – or a Level 3 – for the functional area of *continence of bladder*. Ms. Myers testified that the Claimant denied leakage of his catheter on the day of the PAS assessment, so she determined that he was Level 4, or using a catheter. Ms. Ikerd clarified that when an individual uses a catheter, incontinence can only be assessed when there is leakage, and the frequency of leakage incidents must be the same as the frequency of accidents for individuals not using a catheter – or at least three episodes per week. ----- testified that at the time of the assessment, his catheter leaked once; when pressed to clarify, he indicated that he meant once in that month or once per month. He testified that his catheter is changed twice a week.

- 9) [REDACTED] testified that the Claimant requires “situational assistance” – or qualifies for Level 3 – in the functional area of *wheeling*. Ms. Myers testified that she assessed the Claimant as Level 2 – or “wheels independently” – based on the explicit statement of the Claimant at the time. Ms. Myers’ comments from the PAS assessment in this area are as follows, in pertinent part:

Wheeling: He wheels independently within the apartment using the motorized scooter. He denies needing situational assistance [*sic*]

- 10) Ms. Myers testified that she assessed the Claimant as “impaired/correctable” – or Level 2 – in the functional area of *vision*, and [REDACTED] testified that the Claimant is blind and should have been assessed as “impaired/not correctable” – or Level 3. Ms. Ikerd testified that the standard considered in this area is functional vision, and not necessarily the standard that an ophthalmologist would consider. Ms. Ikerd indicated that this was a question of whether or not an individual can see well enough to get around in their home. The Claimant testified that he is legally blind in one eye and has cataracts on the other. He testified that he can see people, but not enough detail to read or see writing on a television screen without assistance from a magnifying glass. Ms. Myers’ PAS assessment comments in this area are as follows, in pertinent part:

Vision: He wears rx [*sic*] glasses for reading. He says he is blind in right eye because of glaucoma. He uses a magnifier as well as glasses to read small print. He can see the menu on the TV screen with his glasses. He states he has a cataract on his left eye and vision will get blurry.

- 11) [REDACTED] testified that the Claimant should have been assessed as requiring prompting and supervision in the area of *medication administration*, due to his use of a pill planner. The Department assessed the Claimant as capable of administering his own medications. -----, the Claimant’s mother, testified that he does presently use a pill planner for prompting, but did not at the time of the PAS assessment. Ms. Myers’ PAS comments in this area, in pertinent part, state:

Medication Administration: Member takes his medications directly out of pill bottles on his own and places in his own mouth. He states he is good about remembering to take his medications [*sic*]

- 12) The PAS assessment form notes that [REDACTED] and [REDACTED] were present during the assessment. [REDACTED] opined that the Claimant answered questions at the time of the assessment based on concern that he would be placed in a nursing home. Upon questioning from Ms. Ikerd, the Claimant confirmed that he had been on the ADW program for four years, and had not been placed in a nursing home. Ms. Myers’ health assessment notes from the PAS form indicate that she explained the purpose of her visit and that the Claimant verbalized his understanding.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual's level of care for the Aged and Disabled Waiver Program is determined by the number of points assessed on the PAS assessment tool. The Claimant received 16 points on his March 15, 2011, PAS, and was awarded a level of care 'B.' To be awarded a level of care 'C,' a minimum of 18 points is required. Testimony from the Claimant or on the Claimant's behalf confirmed the Department's assessment findings in the areas of *vision*, *medication administration* and *continence of bladder*. The Claimant indicated that his vision can be corrected to a functional standard with the use of a magnifying glass for detail, and his statement regarding the frequency of catheter leakage incidents is insufficient for a change from the Department's assessed level. The Claimant's mother indicated that although the Claimant uses a pill planner for prompting, he did not at the time of the assessment. These areas were assessed correctly by the Department.
- 2) The Department attempted, but was unable, to confirm the medical condition of *arthritis*. The Department was not advised of a physician change for the Claimant, and cannot be expected to act on information unavailable to them. This area was assessed correctly by the Department.
- 3) The testimony from [REDACTED] regarding the Claimant in the functional areas of *dressing* and *wheeling* directly contradict the statements made at the time of the PAS assessment. [REDACTED] was present for the PAS assessment, and could have corrected any areas she believed to be incorrect at the time. The assertion that the Claimant overstated his functional abilities because he was afraid of being placed in a nursing home is unconvincing, given his history with the program and the assessment explanation noted by the Department nurse. These areas were correctly determined by the Department.
- 4) With no additional points revealed through evidence or testimony, the Department's determination of the Claimant's level of care and homemaker hours for the Aged and Disabled Waiver Program is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's determination of level of care and homemaker hours under the Aged and Disabled Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of June, 2011.

Todd Thornton
State Hearing Officer