



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

Earl Ray Tomblin
Governor

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

October 26, 2011

-----For:-----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your mother's hearing held October 21, 2011. Her hearing request was based on the Department of Health and Human Resources' decision to reduce his 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 WVMH (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.3).

The information submitted at this hearing revealed that your mother meets the medical criteria required for Level "C" care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your mother's 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]

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

IN RE: -----

Claimant,

v.

ACTION NO: 11-BOR-1246

**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 October 26, 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 October 21, 2011 on a timely appeal filed May 12, 2011. This hearing was originally scheduled for July 21, 2011, but was rescheduled at the Department's request.

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 which 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 Daughter and Representative
-----, [REDACTED] Claimant's Witness

Sarah Birckhead, RN, WV Bureau of Senior Services, Department's Representative
Brenda Myers, 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 April 21, 2011
- D-3 Notice of Decision dated April 25, 2011

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

Aged/Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.3.1 (e) states in part:

When the home visit is made, the QIO RN, through observation and/or interview process, completes the PAS (Attachment 14). The RN will record observations and findings regarding the applicant's level of function in the home. RNs do not render medical diagnoses. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

- 2) Department's witness testified that she conducted a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant on April 21, 2011. (Exhibit D-2.) On the section of the PAS labeled "Physician Recommendation," the document lists Claimant's primary diagnosis as "Rheumatoid arthritis and osteoarthritis." Claimant was awarded a total of 23

points on the PAS and was approved for Level C of care. WVMJ reported its findings to Claimant in a Notice of Decision dated April 25, 2011. (Exhibit D-3.)

- 3) Claimant's representative asserted that Claimant should have received three more points on her PAS. She stated Claimant should have received these additional points on item #23, Medical Conditions/Symptoms, (j) contractures, on item #26, Functional Abilities, (j) wheeling, and on item #34, Behaviors, Alzheimer's disease.

Contractures – Claimant's representative stated that Claimant had contractures in both of her knees. Claimant's witness, her case manager from her case management agency, testified that Claimant had contractures in her knees and had them at the time the PAS was conducted. Department's witness wrote in the "Health Assessment" section of the PAS, "Contractures – No dx [diagnosis] and member denies." She wrote in the "Nurse's Overall Comments" section of the PAS, "[Claimant] was able to move her legs minimally and lifted them off the bed straight up and bent knee very slightly." Department's witness testified that without a physician's diagnosis of contractures, she would not be able to assign a Level-of-Care point for this medical condition.

Wheeling – Claimant's representative asserted that Claimant should be awarded a point for this functional ability because when Claimant is able to get in her wheelchair, she is unable to propel it around her home. On the PAS section labeled, "Nurse's overall comments," Department's witness has written, "No wheelchair used in the home. [Claimant] stays in bed and is only transported on ambulance gurney when she goes to the hospital. They do have wheelchair but do not use it."

Alzheimer's Disease – On the PAS section labeled, "Nurse's overall comments," Department's witness has written, "Alzheimer's, Dementia or related condition - no dx [diagnosis], member denies and no meds. [Claimant's representative] states before [diagnosis] of cirrhosis [Claimant's physician] but . . . it was determined mental confusion was because of ammonia levels and dementia medication was [discontinued]." Claimant's representative stated that her mother had been in a confused mental state before cirrhosis was diagnosed due to the ammonia level in her blood stream, and when this was corrected, her mother's mental state improved.

- 4) Claimant's representative stated that she was present when the PAS was conducted. She stated that she wanted to know if the change in the diagnosis regarding her mother's temporary dementia resulted in the lowering of her mother's level of care. She stated that since the PAS was completed, her mother

has developed decubitus sores. Department's representative asserted that any deterioration in Claimant's condition should be addressed in a request for a Level-of-Care change.

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 23 points as the result of a PAS completed by WVMI in April 2011. This places Claimant at a level of care of "C." In order to receive a level of care of "D," Claimant needs at least 26 points on the PAS.
- 2) Claimant's representative testified that she was present for the PAS and felt that her mother should have been awarded points for the medical condition of contractures, the functional ability of wheeling and for the behavioral condition of Alzheimer's disease.
- 3) No points will be awarded for contractures. In order for the assessing nurse to award a point for this medical condition, she should have been given a medical diagnosis from Claimant's physician.
- 4) No points will be awarded for wheeling. When the PAS was conducted, the assessing nurse was informed by Claimant's representative that Claimant did not use her wheelchair.
- 5) No points will be awarded for Alzheimer's disease. The assessing nurse did not have a diagnosis of Alzheimer's disease. Claimant's representative conceded that her mother's previous diagnosis of Alzheimer's disease was a temporary condition caused by a build-up of ammonia her blood stream from an undiagnosed liver condition.
- 6) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 23 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 26th day of October 2011.

**Stephen M. Baisden
State Hearing Officer**