



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

August 29, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 24, 2011. Your hearing request was based on the Department of Health and Human Resources' establishment 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
Kim Sang, WVMi

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1397

**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 August 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 August 24, 2011 on a timely appeal, filed June 1, 2011.

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
Kay Ikerd, Department representative
Kim Sang, 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 May 11, 2011
- D-3 Additional information received from [REDACTED] MD, and [REDACTED] MD
- D-4 Notice of Decision, dated May 12, 2011

VII. FINDINGS OF FACT:

- 1) Claimant is a 50-year old male recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on May 11, 2011 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-4) to the Claimant on or about May 12, 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 124 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 May 11, 2011, Pre-Admission Screening, or PAS (Exhibit D-2), Kim Sang – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – assessed 19 points for the Claimant. Seven points were awarded for medical conditions and symptoms, one for vacating, nine for functional abilities in the home, one for continuous oxygen, and one for medication administration. This point level corresponds to the level of care “C,” and the service limit of 124 hours monthly noted on the decision (Exhibit D-4) issued to the Claimant.
- 5) The Claimant disputed seven areas on the Claimant’s behalf: *eating*, *bathing*, *dressing*, *grooming*, *continence of bladder*, *continence of bowel*, and *prognosis*.
- 6) The Claimant testified that he vomits on a daily basis. Ms. Sang testified that there is no area of the PAS that allows points to be awarded for this condition.
- 7) The Claimant testified that he is unable to prepare his meals, with regard to the functional area of *eating*. Ms. Sang testified that this area does not take into consideration meal preparation.
- 8) The Claimant was assessed as requiring physical assistance in the functional areas of *bathing*, *dressing*, and *grooming*. Ms. Sang testified that she could not award one level higher in these areas – or indicate that the Claimant required total assistance in these areas – because he was able to offer some degree of assistance in all three areas. The Claimant testified that he was able to assist to some degree in all three areas, but would not be able to bathe, dress, or groom himself entirely by himself.
- 9) The Claimant testified that he uses a “potty chair,” and is unable to get to the chair or empty it on his own. This was treated as a dispute of the Department’s assessment of *continence of bladder* and *continence of bowels*. He did not testify that he was unable to control the urge to urinate or the urge to vacate his bowels.
- 10) The Claimant testified that he has “AIDS.” The PAS dated May 11, 2011 notes that the Claimant has been “HIV+ for 25 yrs.” He disputed the prognosis listed on the PAS as “deteriorating,” and stated that the disease is terminal. Ms. Sang testified that the standard used is a hospice standard – that a terminal prognosis is based on an expectation to live six months or less – and is based on what was reported to her by the physician.

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 19 points on his May 11, 2011, PAS, and was awarded a level of care 'C.' To be awarded a level of care 'D,' a minimum of 26 points is required. Testimony from the Claimant confirmed the Department's assessment findings in the areas of *bathing, dressing and grooming*. The Claimant indicated that he is unable to perform these tasks on his own, but is able to assist to some degree, corresponding with the Department assessment that he requires physical assistance but not total assistance. These areas were assessed correctly by the Department.
- 2) The Claimant's dispute of the functional areas of *eating, bladder continence, and bowel continence* reflects a misunderstanding of what these areas encompass. Eating does not include meal preparation, and continence deals with the ability to recognize and control the urge to urinate or vacate the bowels – not with the ability to reach or empty a bedside commode. These areas were assessed correctly by the Department.
- 3) The Claimant suffers from a disease that is ultimately terminal. This is not the same as a physician's statement that his prognosis is specifically terminal in the next six months. The area of *prognosis* was correctly assessed 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 August, 2011.

Todd Thornton
State Hearing Officer