



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

October 26, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 26, 2011. Your hearing request was based on the Department of Health and Human Resources' 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
Sarah Carpenter, WVMH

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1474

**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 26, 2011 on a timely appeal, filed June 17, 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

-----, Claimant's representative

Kay Ikerd, Department representative

Sarah Carpenter, 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 June 8, 2011
- D-3 Notice of Decision, dated June 9, 2011

Claimant's Exhibit:

- C-1 Letter from [REDACTED] MD, dated August 30, 2011

VII. FINDINGS OF FACT:

- 1) Claimant is an 80-year old male recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on June 8, 2011 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about June 9, 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 June 8, 2011, Pre-Admission Screening, or PAS (Exhibit D-2), Sarah Carpenter – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – assessed 17 points for the Claimant. Four points were awarded for medical conditions and symptoms, one for vacating, eleven for functional abilities in the home, and one for medication administration. 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 disputed one area: the medical condition of *expressive aphasia*.
- 6) The Claimant’s registered nurse supervisor, -----, presented physician documentation (Exhibit C-1) that the Claimant “...has a diagnosis of expressive aphasia.” This letter is dated August 30, 2011, and does not specify the date of onset of this condition.

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 17 points on his June 8, 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. Documentation on the Claimant’s behalf in the disputed area of *expressive aphasia* shows that the Claimant has a valid diagnosis for this condition as of August 30, 2011; because the PAS was completed on June 8, 2011, and the letter from the Claimant’s physician did not elaborate, it is unclear if the Claimant had this condition at the time of the PAS. No testimony or evidence was offered to demonstrate any error on the part of the reviewing nurse in completing the June 8, 2011 PAS.
- 2) 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 October, 2011.

Todd Thornton
State Hearing Officer