



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

December 15, 2011

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

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Dear Ms. [REDACTED]

Attached is a copy of the Findings of Fact and Conclusions of Law on your mother's hearing held December 7, 2011. Your hearing request was based on the Department of Health and Human Resources' decision not to raise her level of care hours from Level "C" to Level "D."

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 not to raise your mother's homemaker service hours under the Aged and Disabled Waiver Program to Level "D."

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-2103**

**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 December 15, 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 by telephone conference call on December 7, 2011, on a timely appeal filed September 16, 2011. This hearing was originally scheduled for November 9, 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's Daughter and Representative

Kay Ikerd, 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.

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 not to increase Claimant's homemaker hours from a Level "C" to a Level "D."

**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 August 24, 2011
- D-3 Notice of Decision dated September 6, 2011

**Claimant's Exhibits:**

- C-1 Written statement from Claimant's representative, undated, received by Board of Review on September 23, 2011

**VII. FINDINGS OF FACT:**

- 1) Department's representative entered 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 August 24, 2011. (Exhibit D-2.) On the section of the PAS labeled "Physician Recommendation," the document lists Claimant's primary diagnosis as "Dementia, HTN [hypertension] and GERD [gastroesophageal reflux disease]." Claimant was awarded a total of 21 points on the PAS and was approved for Level C of care. WVMi reported its findings to Claimant in a Notice of Decision dated September 6, 2011. (Exhibit D-3.)

- 3) Claimant's representative asserted that her mother should have received twelve more points on her PAS. She stated she should have received these additional points on item #23, Medical Conditions/Symptoms, (g) aphasia, item #24, decubitus, and item #26, Functional Abilities, (a) eating, (b) bathing, (c), dressing, (d), grooming, (f), continence of bowels, (g), orientation, (h), transferring, (i), walking, (l), hearing, and (m), communication.

***Aphasia*** – According to the August 24 PAS (Exhibit D-2) no point was awarded for this medical condition. Department's witness testified that ADW Program policy requires a physician's diagnosis in order for her to award a level-of-care point for a medical condition. She testified that she had no such diagnosis. Department's witness also stated that Claimant did speak during the PAS.

***Decubitus*** – The August 24 PAS (Exhibit D-2) did not assess Claimant as having a decubitus, or a bed or pressure sore. Claimant's representative stated that Claimant had a decubitus in the past. Department's witness testified that neither the homemaker nor Claimant's representative, who was present for the PAS, reported a decubitus.

***Eating*** – The August 24 PAS (Exhibit D-2) rated Claimant at level 2, one-person assistance, and gave her one point for this functional ability. Claimant's representative argued that her mother needs total care in feeding and should be assessed at level 3. Department's witness testified that during the PAS, she observed Claimant hold her arms above her head and she tested Claimant's grip by having her squeeze her fingers. She stated that Claimant's grip was firm. She added that although she did not observe Claimant eating, she did not observe anything that would indicate Claimant could not participate in feeding herself.

***Bathing*** – The August 24 PAS (Exhibit D-2) rated Claimant at level 2, one-person assistance, and gave her one point for this functional ability. Claimant's representative stated that she had given her mother baths, and she knew that her mother was not able to participate in bathing. On the section of the PAS labeled, "Nurse's overall comments," Department's witness has written, "Caregiver assists her with a shower twice weekly. Caregiver will assist her in and out of shower and she sits on the shower chair. [Claimant] washes all her body herself in the shower except for her back." Department's witness stated that she had observed Claimant walking, bending and raising her arms, so she saw nothing to indicate Claimant could not participate in bathing herself.

***Dressing*** – The August 24 PAS (Exhibit D-2) rated Claimant at level 2, one-person assistance, and gave her one point for this functional ability. Claimant’s representative stated that her mother required total care. She added that her mother cannot dress herself at all. Department’s witness testified that in order to assess Claimant at level 3 and award an additional point, she would have to see that Claimant was unable to participate in dressing. She added that Claimant demonstrated her ability to reach her arms above her head and to move around her home, so Department’s witness saw no indication that Claimant could not participate to some degree in dressing herself.

***Grooming*** – The August 24 PAS (Exhibit D-2) rated Claimant at level 2, one-person assistance, and gave her one point for this functional ability. Claimant’s representative stated that her mother required total care for this functional ability. She stated that her mother could not brush her teeth or her dentures in her small bathroom while simultaneously holding onto her walker. On the “Nurse’s overall comments” section of the PAS, Department’s witness has written, “Caregiver states [Claimant] doesn’t comb her hair but will use her fingers to fix it and caregiver will use a pick and a comb. Caregiver states she will put a dab in [Claimant’s] hand of lotion and prompt her to rub it on her hands, neck, etc . . . [Claimant] can apply her own deodorant and no longer shaves legs and underarms.” Department’s witness testified that she observed Claimant raising her arms and bending over, and had tested her hand grips, so she saw nothing to indicate that Claimant could not participate to some degree in her grooming.

***Continence of Bowel*** – The August 24 PAS (Exhibit D-2) rated Claimant at level 2, occasionally incontinent (level 2), and gave her one point. Claimant’s representative argued that her mother had bowel accidents more than three times per week. On the “Nurse’s overall comments” section of the PAS, Department’s witness has written, “Caregiver states . . . [Claimant] has more problems with constipation and has occasional accidents with her bowels maybe 3 to 4 times a month . . . Daughter reports she has flare ups of diverticulitis.”

***Orientation*** – The August 24 PAS (Exhibit D-2) rated Claimant at level 2, intermittently disoriented (level 2), and gave her one point for this functional ability. Claimant’s representative stated that her mother is completely disoriented. She stated that her mother has delusions and hallucinations, sometimes carrying on conversations with imaginary people. Department’s witness testified that at the time of the PAS, Claimant could state her name and address but did

not know the date or year. She added that Claimant would have to be completely disoriented to person, place and time in order to receive an additional point.

***Transferring*** – Department’s representative testified that Claimant was assessed at level 3 and awarded two level-of-care points, which is the maximum for this functional ability.

***Walking*** – The August 24 PAS (Exhibit D-2) rated Claimant at level 2, assistive device needed, and gave her one point for this functional ability. Claimant’s representative stated that her mother required one-person assistance and sometimes two-person assistance in order to walk. Department’s witness testified that she observed Claimant walking with the assistance of her walker on the day of the PAS assessment.

***Hearing*** – The August 24 PAS (Exhibit D-2) rated Claimant at level 1, impaired but correctable, and gave no points for this functional ability. Claimant’s representative testified that her mother was deaf, and the reason her hearing was not correctable was that neither she nor her family had the financial means to purchase an assistive hearing device. The “Nurse’s overall comments” section of the PAS states as follows: “[Claimant] is deaf in left ear since childhood and daughter reports she hears fairly well out of right ear but has to turn her head to hear and often you have to speak more loudly to her.” Department’s witness testified that Claimant was able to hear and respond to the questions asked of her during the PAS.

***Communication*** – The August 24 PAS (Exhibit D-2) rated Claimant at level 1, not impaired, and did not award a point for this functional ability. Claimant’s representative argued that her mother should have been assessed at level 3 and awarded two points. She added that her mother cannot communicate her basic needs. The “Nurse’s overall comments” states as follows: “Communication: Speech is not impaired. She answered questions I asked appropriately and had conversation with me and caregiver during the visit. She also has delusions and has conversations with people she thinks are present in the home.”

- 4) Claimant’s representative stated that the WVMi nurse began the assessment before she had arrived at her mother’s home. She argued that since she had her mother’s power of attorney, Department’s witness should not have asked the homemaker any questions about her mother’s condition or functioning, and she should have directed all questions to her alone. Department’s witness testified that the August 24 PAS indicates Claimant’s representative was present for the PAS and the PAS documents the input made by both the homemaker and Claimant’s

representative. The “Nurse’s overall comments” section of the PAS states as follows: “Reviewed assessment with caregiver, consultant from Public Partnerships and daughter with agreement. No questions or concerns voiced.”

- 5) Aged/Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.3 (d) states in part:

If the Medical Necessity Evaluation Request Form indicates that the applicant has Alzheimer’s, multi-infarct, senile dementia, or related condition; or if he/she has a guardian, or legal representative, the assessment will not be scheduled without the guardian, or legal representative present to assist the applicant.

### **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 21 points as the result of a PAS completed by WVMI in August 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 and her witness argued that Claimant should have been awarded additional points for aphasia, decubitus, eating, bathing, dressing, grooming, continence of bowels, orientation, transferring, walking, hearing and communication.
- 3) No points will be awarded for aphasia. There was no medical diagnosis for this condition made available to the assessing nurse at the time of the PAS or within the following two weeks.
- 4) No points will be awarded for a decubitus. Department’s witness testified that neither the homemaker nor Claimant’s representative reported during the PAS that her mother had a bed or pressure sore.
- 5) No additional points will be awarded for eating, bathing, dressing or grooming. No evidence or testimony was provided to indicate that Claimant could not at least participate to some degree in each of these functional abilities.
- 6) No additional points will be awarded for bowel incontinence. The August 2011 PAS did not indicate that Claimant’s representative objected to the homemaker’s estimate that Claimant had no more than three to four bowel accidents per month.
- 7) No additional points will be added for orientation. The PAS did not demonstrate that Claimant was completely disoriented to person, place and time.
- 8) No additional points will be added for transferring. Claimant received the maximum number of points for this ability.



- 9) No additional points will be added for walking. Department's witness recorded on the August 2011 PAS that she observed Claimant walking with an assistive device, a walker.
- 10) No points will be awarded for hearing. There was no information to indicate that Claimant's hearing problem was not correctable. Department's witness testified that Claimant heard and answered her questions during the August 2011 PAS.
- 11) No points will be awarded for communication. Department's witness testified that Claimant was able to answer questions appropriately.
- 12) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 21 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 keep Claimant's level of care under the Aged and Disabled Waiver Program at Level "C".

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision  
Form IG-BR-29

**ENTERED this 15<sup>th</sup> day of December 2011.**

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**Stephen M. Baisden**  
**State Hearing Officer**