



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

December 16, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 15, 2011. Your hearing request was based on the Department of Health and Human Resources' action to reduce your homemaker service hours in the Aged/Disabled Waiver Program due to 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.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state that for the Aged/Disabled Waiver Program, individuals are evaluated by utilizing the Pre-Admission Screening (PAS) tool to assess their functioning abilities in the home. Points are assigned by the nurse based on the information derived from the PAS assessment interview, and the level of care is divided into four categories of assistance. The individual's level of care is determined based on the points assessed during the completion of the PAS assessment. (Aged and Disabled Waiver Manual Section 501)

The information provided during your hearing fails to show that you meet the medical requirements for Level of Care (D) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your level of care under the Aged/Disabled Waiver Program from Level (D) to Level (C).

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI / [REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2318

**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 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 December 15, 2011.

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's representative

-----, Claimant's witness

Kay Ikerd, Department's representative

Melissa Bell, Department's witness

It should be noted that the parties participated in the hearing by conference call.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to reduce the Claimant's Level of Care benefits under the Aged/Disabled Home and Community-Based Waiver Program from level (D) to level (C).

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Pertinent provisions of Aged/Disabled Waiver Policy Manual
- D-2 Pre-Admission Screening (PAS) assessment completed September 29, 2011
- D-3 Notice of Decision dated October 31, 2011
- D-4 Pre-Admission Screening (PAS) assessment completed November 29, 2010
- D-5 Medical Necessity Evaluation Request Form

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing a required annual re-evaluation for the Title XIX Aged/Disabled Waiver Program during the month of September 2011. The Department's representative, Kay Ikerd, with the Bureau of Senior Services, stated that due to a recent Supreme Court decision, the Department is now required to provide the prior year's PAS assessment for comparison and show why this year's PAS assessment was rated differently.
- 2) A West Virginia Medical Institute (WVMI) registered nurse, Melissa Bell, visited the Claimant in her home and completed her Pre-Admission Screening (PAS) medical assessment (D-2) on September 29, 2011. She determined that the Claimant continues

to meet the medical requirements for the program; however, she assessed the Claimant at a reduced level from the previous determination - Level of Care (C) rather than Level (D). The Claimant received twenty-five (25) points during the PAS assessment, which places her in Level (C) care. For Level of Care (D), the Claimant would need at least twenty-six (26) points.

- 3) During the hearing, the WVMi nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. She also discussed the prior year's PAS and noted when this year's findings were different, explaining her reasoning in each instance.
- 4) The Claimant's representative contested the Department's ratings in two (2) areas – bathing and dressing.

In the area of bathing, the Claimant was rated during the 2011 PAS assessment as needing physical assistance to perform the activity, and was assigned one (1) point. The nurse explained that this meant that the Claimant was able to participate in the activity in some manner, but that she also required someone to physically assist her to some degree. The nurse noted that during the 2010 PAS assessment, the Claimant was rated as needing total assistance. She explained that this rating meant that the Claimant was assessed at that time as being unable to assist at all in bathing. The nurse recorded the following relevant information during the 2011 PAS assessment:

Son reports member takes a shower – member has a walk in shower – member has a shower seat – member requires assistance in/out of the shower. HM [homemaker]/son reports member is able to wash her upper body, face and arms. HM is completing rest of bath.

The nurse stated that because the Claimant's son and homemaker reported that the Claimant was able to participate in the activity in some manner during the 2011 PAS assessment, she was rated as needing physical assistance. She explained that when comparing her current functioning assessment to the prior year's assessment, the Claimant showed improvement in her functioning level during 2011.

The Claimant's Case Manager with [REDACTED] [REDACTED]-----, stated that the Claimant's physician reported that the Claimant needed total assistance with this activity; however, the physician did not elaborate. The Claimant's son, -----, stated that the Claimant can wash the top of her body, but that she requires physical assistance with the remainder of her bath.

In the area of dressing, the Claimant was rated during the 2011 PAS assessment as needing physical assistance to perform the activity, and was assigned one (1) point. The nurse explained that this meant the Claimant was able to participate in the activity in some manner, but that she also required physical assistance of another to some degree. She noted that during the 2010 PAS assessment, the Claimant was rated as needing total assistance. She explained that this rating meant that the Claimant was

unable to assist at all in the activity and required physical assistance with the entire activity at that time. The nurse recorded the following relevant information during the 2011 PAS assessment interview:

HM [homemaker] states she will pick out member's clothes for member, member and HM will work together and dress member. HM is putting on socks and shoes. Son states at times member is able to put on shirts and pants by self.

----- stated that the Claimant's physician reported that the Claimant requires total assistance with this activity; however, the physician did not elaborate. The Claimant's son stated that the Claimant is able to put on her bra, shirts and pants without physical assistance, but that she requires assistance with the remainder of her dress.

The nurse testified that she considered the physician's statement, but that based on her observations and the reports from the Claimant's son and homemaker during the 2011 assessment, she determined that the Claimant had improved from the prior year's functional assessment and that she only needs physical assistance.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1(a) (D-1) Service Level Criteria, states in pertinent part:

There are four Service Levels for Personal Assistance/Homemaker services. Points will be determined as follows based on the following sections of the PAS:

#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

- 6) Aged/Disabled Home and Community Based Services Waiver Policy Manual 501.5.1.1(b) (D-1) Service Level Limits states:

Level	Points Required	Range of Hours per Month
A	5-9	0-62
B	10-17	63-93
C	18-25	94-124
D	26-44	125-155

The total number of hours may be used flexibly within the month, but must be justified and documented on the Plan of Care. Example: If the Plan of Care shows two hours/day, Monday-Thursday and 5 hours on Friday, and three hours on Saturday, the additional hour on Saturday must be justified on the Plan of Care.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that there are four levels of care for homemaker services. Points are determined based on the individual's medical condition and functional abilities at the time the PAS is completed. Points are assigned accordingly.
- 2) The Claimant was assessed at Level of Care (C) during her September 29, 2011 assessment having received twenty-five (25) points. To be assessed at Level of Care (D) the Claimant must be assigned at least twenty-six (26) points.
- 3) Policy provides that during the assessment process, the Department is to complete the PAS assessment by means of both observation and/or an interview process in order to determine the individual's functional ability in the home.
- 4) The Claimant disputed the Department's findings in the areas of bathing and dressing, and contended that she should be rated as needing total assistance to perform these functions. She was rated as needing physical assistance and assessed one (1) point. Two (2) points are awarded if the evidence shows the Claimant needs total assistance. In order to be rated "total

assistance” the Claimant would need to show evidence that she is unable to participate at all in the activities.

- 5) The totality of the testimony and evidence provided during this hearing supports that the Department correctly assessed the Claimant in the areas of bathing and dressing. The Claimant’s son testified during the hearing that the Claimant is able to participate to some degree in both activities, and the nurse documented during the September 2011 PAS assessment that the Claimant’s other son and the Claimant’s homemaker both indicated at that time that Claimant can participate some in these activities. Although the Claimant’s physician reported she needed total assistance for the activities, more weight is given to the witness statements that were in the home during the completion of the activities than is given to the physician’s non-specific report. The Department also showed that the Claimant had improved in these areas since her 2010 PAS assessment was completed.
- 6) Based on these findings no additional points are awarded. The Department was correct in its decision to reduce the Claimant’s Level of Care from Level (D) to Level (C).

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency’s proposal to reduce the Claimant’s Level of Care 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 16th Day of December, 2011.

**Cheryl Henson
State Hearing Officer**