



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

June 10, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 31, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your level of care hours from Level "C" to Level "B."

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 your hearing revealed that you meet the medical criteria required for Level "B" care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker service hours under the Aged and Disabled Waiver Program to Level "B."

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] County, [REDACTED] WV

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

IN RE: -----

Claimant,

v.

Action Number: 11-BOR-799

**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 June 10, 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 May 31, 2011 on a timely appeal filed January 31, 2011. This hearing was originally scheduled for May 23, 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:

-----, [REDACTED] in [REDACTED] County, Claimant's Representative
-----, Claimant's Husband and witness
-----, [REDACTED] in [REDACTED] County, Claimant's Witness
-----, [REDACTED] in [REDACTED] County, Claimant's Witness

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.

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 "C" to a Level "B."

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 January 19, 2011
- D-3 Notice of Decision dated January 25, 2011

Claimant's Exhibits:

- C-1 WV Medicaid Aged and Disabled Waiver Program RN Assessment Form dated September 29, 2010
- C-2 Letter from [REDACTED] M.D, dated April 5, 2011
- C-3 WV Medicaid Aged and Disabled Waiver Program Case Management Assessment Form dated March 21, 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 501.3.4.1 (b) states in part:

The member will be given two weeks to submit supplemental medical information to the QIO [Quality Improvement Organization]; supplemental information received by the QIO is given to the reviewing RN. Information submitted after the two-week period will not be considered.

- 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 January 19, 2011. (Exhibit D-2.) Claimant was awarded a total of 15 points on the PAS and was approved for Level B of care. WVMi reported its findings to Claimant in a Notice of Decision dated January 25, 2011. (Exhibit D-3.)
- 3) Claimant's representative submitted into evidence a letter from Claimant's physician, [REDACTED] M.D., dated April 5, 2011. (Exhibit C-2.) This letter was mailed nearly three months after the PAS was conducted. The letter reads in part:

This is an update of physical activity and functional assessment on [Claimant]. She last visited my office on 2-7-11. She was unable to walk and was brought to the examining room on a wheel chair. She requires 1 – 2 person manual support to get up from the chair to the commode. She requires total assistance on dressing, grooming, bathing and personal hygiene. She is totally incontinent of bladder requiring frequent pad changes, and occasionally incontinent of bowel. She no longer is safe to self-administer medication due to loss of memory and disorientation, now requiring her spouse to administer her medications.

She is unable to self-propel her wheel chair due to generalized weakness and debility. She is a high risk for skin breakdown due to inability to maneuver on chair or bed because of exacerbation of chronic pain from advanced degenerative joint disease. She has dyspnea on minimal activity from markedly impaired physical tolerance.

- 4) Claimant's representative testified that Claimant should have received two more points on her PAS. She testified Claimant should have received five additional points on item #26, Functional Abilities, for (e) continence of bladder, (g) orientation, (h) transferring and (i) walking.

Continence of Bladder – Claimant's representative testified that Claimant is totally incontinent now and uses incontinence pads. Department's representative stated that Claimant was assessed at Level 3 and was awarded two points for this functional ability. She added that this is the highest level at which an individual may be assessed unless he or she requires catheterization.

Orientation – Claimant's representative testified that Claimant should be awarded a point for this functional ability because on the letter from Dr. [REDACTED] (Exhibit C-2), Claimant's physician notes that Claimant's disorientation causes her to be unable to administer her medications. On the section of the PAS labeled, "Nurse's overall comments," the assessing nurse has written, "Member is alert and oriented x 3. She signed and dated consent form without prompting. She knows and verbalizes where she lives, her [date of birth] and [Social Security number] and that Obama is the President. Discussed disorientation with [Claimant] and husband and both deny that she becomes disoriented to person, place or time."

Transferring – Claimant's representative testified that Claimant should be awarded a point for this functional ability because on the letter from Dr. [REDACTED] (Exhibit C-2), Claimant's physician notes that Claimant requires 1 – 2 person manual support to get up from

the chair to the commode. On the section of the PAS labeled, "Nurse's overall comments," the assessing nurse has written, "Assistive device. [Claimant] holds onto walker and frame of bedside commode as she transfers. She sleeps in a regular bed and denies that she needs someone to physically lift on her to get out of bed."

Walking – Claimant's representative testified that Claimant should be awarded a point for this functional ability because on the letter from Dr. [REDACTED] (Exhibit C-2), Claimant's physician notes that on her most recent visit to his office, Claimant was unable to walk and was brought into his examining room on a wheelchair. On the section of the PAS labeled, "Nurse's overall comments," the assessing nurse has written, "Assistive device. [Claimant] can walk a few steps while holding onto an assistive device." Department's representative testified during the hearing that the PAS is conducted and Level-of-Care points are assigned based on how the individual functions in the home, not on visits to doctors' offices or other outings.

- 5) Department's witness testified that Claimant and her spouse were present for the PAS conducted on January 19, 2011, as was Claimant's homemaker. She testified that she reviewed the PAS results with all individuals who were present at that time, and they concurred with her findings.

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 15 points as the result of a PAS completed by WVMi in November 2010. This places Claimant at a level of care of "B." In order to receive a level of care of "C," Claimant needs at least 18 points on the PAS.
- 2) Policy dictates that additional medical information to be considered on a PAS must be submitted within two weeks of the PAS date. Therefore the letter from Claimant's physician, dated April 5, 2011, was submitted too late to be considered for the purpose of this decision. No other substantial evidence or testimony was offered by Claimant's representative or witnesses to support their contention that more Level-of-Care points should have been awarded on her January 19, 2011 PAS.
- 3) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 15 points. She meets the medical criteria required to receive a Level B 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 "C" to Level "B".

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th day of June 2011.

Stephen M. Baisden
State Hearing Officer