



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704

Rocco S. Fucillo
Cabinet Secretary

July 27, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 19, 2012. Your hearing request was based on the Department of Health and Human Resources' reduction of level of care for Aged and Disabled Waiver services.

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 "D," a minimum of 26 points must be determined from the PAS. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.5.1.1(a); §501.5.1.1(b))

The information submitted at the hearing revealed that the Department correctly assessed your level of care for ADW services.

It is the decision of the State Hearing Officer to **uphold** the Department's determination of your level of care for ADW services.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Brenda Myers, WVMI
Allied Nursing & Community Services, Case Management Agency

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1246

**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 July 27, 2012, for -----. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This Fair Hearing was convened on July 19, 2012, on a timely appeal, filed May 1, 2012.

All persons offering testimony were placed under oath.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (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
-----, Claimant's witness
Kay Ikerd, Department representative
Brenda Myers, 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 level of care for Aged and Disabled Waiver services.

V. APPLICABLE POLICY:

Chapter 501: Aged & Disabled Waiver Services Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501: Aged & Disabled Waiver Services Manual, §§501.5.1.1(a) – 501.5.1.1(b)
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services, dated April 27, 2011
- D-3 Pre-Admission Screening for Aged/Disabled Waiver Services, dated April 11, 2012
- D-4 Notice of Decision, dated May 11, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant is a 58-year old female recipient of ADW services for whom a reevaluation of medical eligibility was completed on April 11, 2012 (Exhibit D-3).
- 2) On or about May 11, 2012, the Claimant was mailed a notice of decision (Exhibit D-4) stating that he continued to be medically eligible for the ADW program, with homemaker service hours that "...cannot exceed 124 hours per month." This corresponds with a level of care "C." Kay Ikerd, representative for the West Virginia Department of Health and Human Resources' (Department) Bureau of Senior Services – the bureau responsible for administering the ADW program – testified that the level of care "C" represents a reduction from the Claimant's previous level of care, which was level "D."
- 3) Policy from Chapter 501: Aged & Disabled Waiver Services Manual, §§501.5.1.1(a) – 501.5.1.1(b), states, in pertinent part:

501.5.1.1(a) Service Level Criteria

There are four Service Levels for Personal Assistance/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 at Level 3 or Level 4 in order to get points 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.

501.5.1.1(b) Service Level Limits

Traditional Service Levels

| Level | Points Required | Range of Hours Per Month (for Traditional Members) |
|-------|-----------------|----------------------------------------------------|
| A | 5-9 | 0 – 62 |
| B | 10-17 | 63 – 93 |
| C | 18-25 | 94 – 124 |
| D | 26-44 | 125 – 155 |

- 4) Brenda Myers – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – conducted the April 11, 2012, Pre-Admission Screening (PAS) assessment form (Exhibit D-3) regarding the Claimant and assessed 25 points. Six points were awarded for medical conditions and symptoms, one for vacating, sixteen for functional abilities in the home, one for medication administration, and one for prognosis. Based on this point level the Claimant was assessed at a level “C” and the notice of decision (Exhibit D-4) was issued to the Claimant.

- 5) Three additional areas were proposed on the Claimant's behalf: medical conditions or symptoms of *angina* and *dyspnea*, and the functional ability to *transfer*.
- 6) Ms. Ikerd testified that the Claimant is already receiving the maximum number of points available for the area of *transferring*, based on the most recent PAS.
- 7) Regarding the medical condition or symptom of *angina*, ----- – representative for the Claimant – testified that the Claimant received credit for angina in the past, and that her condition and medications have not changed. Ms. Myers testified that the Claimant denied angina during the PAS assessment and there was no diagnosis from a physician for angina. Ms. Myers testified that the Claimant takes a medication – metoprolol – that is used for both angina and hypertension. Because the Claimant has hypertension and denied angina, the diagnosed hypertension explained the prescribed medication, and she did not further explore the possibility of angina.
- 8) Regarding the medical condition or symptom of *dyspnea*, ----- relayed the Claimant's concern that her medical conditions and medications had not changed and that she was credited with dyspnea in the prior PAS but not the current PAS. Ms. Myers testified that the Claimant denied dyspnea symptoms, and that there was no diagnosis from a physician for dyspnea. Ms. Myers testified that the Claimant is prescribed furosemide, but that furosemide is for fluid retention and does not necessarily indicate dyspnea. For these reasons, she testified she did not request confirmation of the diagnoses of either dyspnea or angina.

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 25 points on her April 11, 2012, PAS, and was awarded a level of care "C." To be awarded a level of care "D," a minimum of 26 points is required.
- 2) The Claimant proposed three areas – *angina*, *dyspnea* and *transferring* – for additional PAS points.
- 3) The Claimant received the maximum number of points allowable for *transferring* on the most recent PAS assessment.

- 4) For both *angina* and *dyspnea*, the Claimant denied the condition and did not present a diagnosis. If the Claimant took prescription medication indicating she had these conditions, the assessing nurse could have requested diagnoses from the Claimant's physician; however, the prescription medications listed for the Claimant were not exclusively for angina and dyspnea. The Department's assessment of these areas is correct, given the information provided to the assessing nurse.
- 5) With no additional points revealed through testimony and evidence, the Department's determination of level of care for ADW services for the Claimant is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's determination of level of care 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 July, 2012.

**Todd Thornton
State Hearing Officer**