



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

Rocco S. Fucillo  
Cabinet Secretary

August 22, 2012

-----  
-----  
-----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 16, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your level of care hours from Level "C" to Level "B."

In arriving at a decision, the State Hearing Examiner 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 and Disabled Waiver program is based on current policy and regulations. These regulations provide that the number of homemaker service hours in the Aged and Disabled Waiver Program is determined based on the Level of Care (LOC). The LOC 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 or hours, which is reviewed and approved by the WV Medical Institute (WVMI). (Aged and Disabled Home and Community Based Waiver Services Policy and Procedures Manual § 501.5)

The information submitted at this hearing revealed that you meet the medical criteria required for Level "C" care.

It is the decision of the State Hearings Examiner to **Reverse** 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 Hearing Examiner  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Kay Ikerd, RN, WV Bureau of Senior Services  
-----, ----- Nursing and Community Service, Charleston, WV

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

**IN RE:     -----**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1405**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondent.**

**DECISION OF STATE HEARING EXAMINER**

**I.     INTRODUCTION:**

This is a report of the State Hearing Examiner resulting from a Fair Hearing 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 by telephone conference call on August 16, 2012, on a  
timely appeal filed May 24, 2012.

**II.    PROGRAM PURPOSE:**

The Program entitled Aged and Disabled Waiver (ADW) is administered by the West  
Virginia Department of Health and 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  
-----, RN, ----- Nursing and Community Service, Claimant's Representative  
-----, RN, ----- Home Care, Claimant's Witness  
-----, ----- Care, Claimant's Witness  
-----, RN, ----- Care, Claimant's Witness  
Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative

Angie Hill, 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. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in the proposal to reduce Claimant's homemaker hours from a Level "C" to a Level "B."

#### **V. APPLICABLE POLICY:**

Aged and Disabled Home and Community Based Waiver Services Policy Manual, Chapter 501.5.1.1(a) and Chapter 501.5.1.1(b).

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- D-1 Aged and Disabled Home and Community Based Waiver Services Policy Manual Chapter 501.5.1.1(a) and Chapter 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) Form dated May 7, 2012
- D-3 Notice of Decision dated May 8, 2012
- D-4 Pre-Admission Screening (PAS) Form dated April 1, 2011

##### **Claimant's Exhibits:**

- C-1 Letter from -----, MD, dated July 18, 2012
- C-2 Letter from ----- Care, LLC, to -----, MD, dated June 11, 2012 and returned by -- ----'s office on August 9, 2012

#### **VII. FINDINGS OF FACT:**

- 1) Department's Representative entered into the record the applicable policy for this hearing. (Exhibit D-1.) Aged and Disabled Home and Community Based Waiver Services Policy Manual Chapter 501.5.1.1(a) and 501.5.1.1(b) 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

- 2) Department's Witness, a nurse with the WV Medical Institute (WVMI) testified that she conducted a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant on May 7, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's homemaker, a registered nurse from ----- Care, and she were present for the PAS. Claimant was awarded a total of 16 points on the PAS and was approved for Level "B" care. WVMI reported its findings to Claimant in a Notice of Decision dated May 8, 2012. (Exhibit D-3.)
- 3) Claimant's Representative asserted that Claimant should have received five more points on her PAS. She stated Claimant should have received these additional points on item #23, Medical Conditions/Symptoms, for (c) dyspnea, (d) significant arthritis, (h) pain, (i) contractures, and (k) mental disorders.
- 4) Department's Witness testified that she could not assess Claimant with a level-of-care point for any medical condition or symptom without a physician's diagnosis of the condition or a prescribed medication clearly meant to treat it. She testified

that she made several attempts to contact Claimant's physician in order for him to confirm these diagnoses, but the physician did not respond.

- 5) Claimant's Representative stated that she made several attempts to contact Claimant's physician, but he did not respond. Claimant's Representative stated that Claimant's witness, a registered nurse from ----- Care, sent a letter (Exhibit C-2) to Claimant's physician asking him to confirm the diagnoses in question. The lower section of the letter had a space for the physician to write in the diagnoses and a space for him to sign. She stated that another doctor in the Claimant's physician's practice completed the lower part of the letter and returned it. The doctor wrote, "right ankle contracture, generalized pain, non-ambulatory, muscular dystrophy," and signed, "-----, MD." She stated that the letter was returned too late to be considered for Claimant's May 7 PAS. Claimant's Representative stated that she received a letter from Claimant's physician (Exhibit C-1) on July 18, 2012, which stated as follows: "To Whom It May Concern, [Claimant] is a patient of mine. This patient is wheelchair and bedridden. It is my understanding that currently she has a caregiver four hours daily. She reported that she may lose this in the near future. I do feel that it would [be] detrimental to her health." The physician has signed the letter.
- 6) Department's Representative stated that the two letters submitted by Claimant's Representative were not sufficient to justify assessing Claimant with additional level-of-care points because they arrived too late for the assessing nurse to include as part of the May 7 PAS. She submitted into evidence the PAS completed for Claimant for the previous year. (Exhibit D-4.) On this PAS, conducted on April 1, 2011, the nurse-evaluator had diagnoses or medications permitting her to assess Claimant with level-of-care points for each of the conditions Claimant's Representative contested. On the April 1, 2011, PAS, Claimant received level-of-care points for item #23, for dyspnea, arthritis, pain, contractures and mental disorders. Department's witness testified that as a nurse-evaluator, she does not have access to the previous year's PAS. She added that if she would have had this information during the current PAS, she would have assessed Claimant with these points. Department's Representative stated that she did not object to the awarding of level-of-care points for each of these medical conditions.

## **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 obtained on the PAS assessment tool. The Claimant was assessed with 16 points as the result of a PAS completed by WVMi on May 7, 2012. This places Claimant at a level of care of "B." In order to receive a level of care of "C," Claimant needed at least 18 points on the PAS.

- 2) Claimant's Representative argued that Claimant should have received five additional level-of-care points, on item #23, Medical Conditions/Symptoms, for dyspnea, arthritis, generalized pain, contractures and mental disorders.
- 3) Department's Representative submitted evidence to indicate that Claimant had received level-of-care points for these medical conditions on her previous PAS, conducted on April 1, 2011. Department's Representative did not object to assessing Claimant with level-of-care points for these conditions.
- 4) Five additional points will be added to Claimant's May 2012 PAS evaluation score. Initially, Claimant was assessed with 16 level-of-care points, and the addition of five points raises her total points to 21. Claimant meets the medical criteria required to receive a Level "C" care.

**IX. DECISION:**

It is the decision of the State Hearing Examiner to **reverse** the proposal 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 22<sup>nd</sup> day of August 2012.**

---

**Stephen M. Baisden**  
**State Hearing Examiner**