



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

September 17, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 22, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your Level of Care hours from Level "D" to Level "C."

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 Hearing Examiner to **uphold** the proposal of the Department to reduce your homemaker service hours under the Aged and Disabled Waiver Program to Level "C."

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
-----, RN, Integrated Resources, -----, W

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

IN RE: -----

Claimant,

v.

ACTION NO.: 12-BOR-1644

**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 22, 2012, on a
timely appeal filed June 18, 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, Integrated Resources, Claimant's Representative
-----, Integrated Resources, Claimant's Witness
-----, Claimant's Witness and Father
-----, Claimant's Witness and Mother

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Michelle Wiley, 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 "D" to a Level "C."

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 June 6, 2012
- D-3 Notice of Decision dated June 13, 2012
- D-4 Pre-Admission Screening (PAS) Form dated June 7, 2011

Claimant's Exhibits:

- C-1 Written Statement from -----, PA, -----

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, 62 hours per month
- Level B** - 10 points to 17 points, 93 hours per month
- Level C** - 18 points to 25 points, 124 hours per month
- Level D** - 26 points to 44 points, 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 June 6, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's parents, Claimant's homemaker from Integrated Resources, and she were present for the PAS. Claimant was assessed with a total of 21 Level-of-Care points on the PAS and was approved for Level "C" care. WVMI reported its findings to Claimant in a Notice of Decision dated June 13, 2012. (Exhibit D-3.)
- 3) Claimant's Representative asserted that Claimant should have received seven more Level-of-Care points on his PAS. She stated Claimant should have received these additional points on item #26, Functional Abilities, for (a) eating, (b) bathing, (c) dressing, (d) grooming, (g) orientation, (h) transferring, and (i) walking.
- 4) **Eating** – The June 2012 PAS (Exhibit D-2) rated Claimant at level 2, physical assistance, and gave him one point for this functional ability. The section of the PAS labeled "Nurse's overall comments" states as follows: "[Claimant] has a feeding tube. He is not getting food through the peg tube. He now eats by mouth. [Homemaker] says that he can feed himself. She says that the food has to be

pureed for him. Father says that the food drops from the bottom of the spoon at times.” Department’s Witness testified that on the April 2011 PAS (Exhibit D-4), Claimant was assessed at level 4, tube feeding. She added that Claimant has begun feeding himself since that time, and the family has discontinued tube feeding.

- 5) **Bathing** – The June 2012 PAS (Exhibit D-2) rated Claimant at level 2, physical assistance, and gave him one point for this functional ability. The “Nurse’s overall comments” section of the PAS states as follows: “[Claimant] is bathed in the bed. [Homemaker] allows him to try to participate with the bathing. She says that he can place the cloth in the left hand and wash the left leg. [Homemaker] completes all other aspects of bathing for him.” Claimant’s Representative argued that the homemaker allows Claimant to try to participate in his bathing only as a function of his ongoing rehabilitative therapy. Claimant’s witness, his father, testified that although when the PAS was conducted, Claimant did wash one leg, he had just returned home from in-patient physical therapy. He added that since that time, Claimant’s improvement in his functional abilities has deteriorated.
- 6) **Dressing** – June 2012 PAS (Exhibit D-2) rated Claimant at level 2, physical assistance, and gave him one point for this functional ability. The “Nurse’s overall comments” section of the PAS states as follows: “[Homemaker] says that he can raise himself up in the bed using the left foot to assist her. [Homemaker] says that he assists himself with the dressing. He can assist with pulling the pants up and getting the shirt on. She has to assist with all areas of the dressing.” Claimant’s Representative stated that without the assistance of the homemaker, the Claimant would not be able to dress himself. She added that due to the health problems of Claimant’s parents and due to Claimant’s girth, Claimant could not get dressed without the homemaker.
- 7) **Grooming** – June 2012 PAS (Exhibit D-2) rated Claimant at level 2, physical assistance, and gave him one point for this functional ability. The “Nurse’s overall comments” section of the PAS states as follows: “[Homemaker] shaves [Claimant] and applies the lotion/deodorant. Family or [Homemaker] trims his nails. He can brush his teeth, but [Homemaker] has to set up everything for him. [Homemaker] washes his hair.” Claimant’s Representative stated that Claimant’s family could not assist Claimant with most of his grooming tasks, and Claimant could not perform these activities without the assistance of the homemaker.
- 8) **Orientation** – The June 2012 PAS (Exhibit D-2) rated Claimant at level 2, intermittently disoriented, and assessed Claimant with one point for this functional ability. The “Nurse’s overall comments” section states: “During the visit, [Claimant] was alert to person. He knew the month and year, as well as the day of the week. He could not tell me where he lived.” Claimant’s Witness, his homemaker, stated she reminds him daily of the day, month and year, and if she did not do so, he would not retain this information.

- 9) ***Transferring*** – According to the June 2012 PAS (Exhibit D-2), Claimant was rated at level 3, one-person assistance, and two points were assessed for this functional ability. Claimant’s Representative stated that on the June 2011 PAS, Claimant was rated at level 4, two-person assistance, and he should have received the same assessment on the current PAS. Department’s Representative stated that two Level-of-Care points were the highest number of points which any individual could receive for this functional ability. She added that regardless of whether Claimant was assessed at level 3 or level 4, he could not receive more than two Level-of-Care points.
- 10) ***Walking*** – According to the June 2012 PAS (Exhibit D-2), Claimant was rated at level 3, one-person assistance, and two points were assessed for this functional ability. Claimant’s Representative stated that on the June 2011 PAS, Claimant was rated at level 4, two-person assistance, and he should have received the same assessment on the current PAS. Department’s Representative stated that two Level-of-Care points were the highest number of points which any individual could receive for this functional ability. She added that regardless of whether Claimant was assessed at level 3 or level 4, he could not receive more than two Level-of-Care points.
- 11) Claimant’s Representative stated that Claimant’s family is unable to care for the Claimant, and that they depend greatly on the homemaker to provide the daily care their son requires. She stated that Claimant’s father has back problems, Claimant’s mother is not in the best of health, and Claimant is a large person. Therefore, she added, they are not able to assist with many of his activities of daily living. She submitted into evidence a statement from a physician’s assistant at Claimant’s primary care physician’s office dated August 14, 2012 (Exhibit C-1), which states as follows, “[Claimant] suffers from exertion, aphasia, contractures and paralysis. He would benefit by keeping his regular hours of home care he has been receiving monthly.” Department’s Representative argued that this statement was submitted on August 14, 2012, while the PAS was completed on June 6, 2012, therefore the information contained in the statement could not have been considered by the WVMi nurse as part of the PAS. She added that the diagnosis of “exertion” is an incomplete diagnosis on the part of the physician’s assistant.

VIII. CONCLUSIONS OF LAW:

- 1) Policy stipulates 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 21 points as the result of a PAS completed by WVMi on May 7, 2012. This places Claimant at a level of care of “C.” In order to receive a level of care of “D,” Claimant needed at least 26 points on the PAS.

- 2) Claimant's Representative argued that Claimant should have received seven additional level-of-care points, on item #26, Functional Abilities, for eating, bathing, dressing, grooming, orientation, transferring and walking.
- 3) No additional point should be assessed for eating. Department's Witness recorded on the June 2012 PAS that Claimant feeds himself since the feeding tube has been discontinued. Although his food has to be pureed, he can lift his spoon to his mouth.
- 4) One additional point should be assessed for bathing. Department's Witness recorded on the June 2012 PAS that Claimant's homemaker "allowed him to try to wash one leg." No testimony was offered that indicated that he could perform this functional ability to any effective degree.
- 5) No additional points should be assessed for dressing. Department's Witness recorded on the June 2012 PAS that Claimant can participate to some degree with his dressing, by pulling up his pants and helping to put on his shirts. In order to receive an additional point for this ability, he would not be able to participate in dressing in any way.
- 6) No additional points should be assessed for grooming. Department's Witness recorded on the June 2012 PAS that Claimant can participate in his grooming by brushing his teeth. In order to receive an additional Level-of-Care point for this functional ability, he would not be able to perform any grooming activity.
- 7) No additional points should be assessed for orientation. Department's Witness testified and recorded on the June 2012 PAS that Claimant was oriented to person, but needed prompting as to place and time. The assessing nurse would need to have determined that he was completely disoriented to person, place and time in order to assess him as being totally disoriented and to award him with an additional Level-of-Care point.
- 8) No additional points should be assessed for transferring. Claimant received the maximum number of points for this functional ability.
- 9) No additional points should be assessed for walking. Claimant received the maximum number of points for this functional ability.
- 10) No additional points should be assessed for any of the diagnoses included on the statement from Claimant's physician's assistant. The diagnoses were submitted too long after the June 2012 PAS was conducted to be considered.
- 11) One additional point will be added to Claimant's June 2012 PAS evaluation score. Initially, Claimant was assessed with 21 level-of-care points, and the addition of one point raises his total points to 22. However, this additional point does not raise Claimant's PAS score high enough to meet Level "D" care. Claimant meets the medical criteria required to receive a Level "C" care.

IX. DECISION:

It is the decision of the State Hearing Examiner to **uphold** the proposal of the Department to reduce Claimant's level of care under the Aged and Disabled Waiver Program 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 17th day of September 2012.

**Stephen M. Baisden
State Hearing Examiner**