



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

October 19, 2012

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Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 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 "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  
----, ----, [REDACTED] WV

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

**IN RE: ----**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1809**

**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 October 16, 2012, on a timely appeal filed July 25, 2012. This hearing originally was scheduled for September 26, 2012, but was rescheduled at the request of Claimant's Representative.

**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's Attorney-in-Fact and Representative

----, ----, -----, WV, Claimant's Witness

----, RN, ----, -----, WV, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative  
Kathy Gue, 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 May 8, 2012
- D-3 Notice of Decision dated May 14, 2012
- D-4 Pre-Admission Screening (PAS) Form dated April 19, 2011

**Claimant's Exhibits:**

- C-1 Statement from Claimant's Primary Care Physician, ----, M.D., dated October 10, 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, 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

Aged and Disabled Home and Community Based Waiver Services Policy Manual Chapter 501.5.1.3(f) states:

Nurses shall not render medical diagnoses. In those cases where there is a medical diagnosis question, the decision shall be based on medical evidence presented by appropriate medical professionals.

- 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 8, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's girlfriend, Claimant's son and she were present for the PAS. Claimant was assessed with a total of 24 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 May 14, 2012. (Exhibit D-3.)
- 3) Claimant's Representative asserted that Claimant should have received three more Level-of-Care points on his May 2012 PAS. She stated Claimant should have received these additional points on item #23, Medical Conditions/Symptoms, for

(d) significant arthritis and (f) dysphagia, and on item #34, Alzheimer's, multi-infarct, senile dementia or related condition, for vascular dementia.

- 4) Department's Witness testified that she did not have a physician's confirmation of any of the above-listed diagnoses. She testified that she could not diagnose these conditions herself, so that confirmation would have to come from Claimant's physician. She stated that the documentation she received referring her to the Claimant to perform his May 2012 PAS did not contain the name of Claimant's primary care physician. She stated that because she did not have the name of Claimant's physician, she was not able to contact his office and attempt to obtain the missing diagnoses. Claimant's Representative stated that on the previous PAS, conducted on April 18, 2011 (Exhibit D-4), Claimant had diagnoses of the above-listed conditions, and received Level-of-Care points for them. She added that these are not curable conditions so she believed Claimant should have received points for them on the May 2012 PAS. Department's Representative stated that there must current diagnoses for each of these medical conditions each time a PAS is conducted. Claimant's Representative also stated that Department's Witness reviewed Claimant's medications during the May 2012 PAS, and these medications had the name of the prescribing physician printed on the labels.
- 5) Claimant's Representative submitted into evidence a statement from Claimant's primary care physician, ----, M.D., dated October 10, 2012. (Exhibit C-1.) This statement reads as follows: "To Whom It May Concern: [Claimant's] level of care has not changed since his last evaluation." Department's Representative pointed out that this statement is dated October 10, 2012, when Claimant's PAS evaluation was completed on May 8, 2012. Therefore, she stated, this information arrived too long after the PAS was completed to be considered as part of Claimant's evaluation. Also, she added, the physician's statement was too generalized to be considered a confirmation of any specific medical condition.

#### **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 24 points as the result of a PAS completed by WVMi on May 8, 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 three additional Level-of-Care points, on item #23, Medical Conditions/Symptoms, for dysphagia and significant arthritis, and on item #34, Alzheimer's, multi-infarct, senile dementia or related condition, for dementia.

- 3) Claimant's primary care physician did not provide diagnoses of the three medical conditions in question. Therefore, no additional Level-of-Care points may be added to Claimant's May 2012 PAS for these conditions.
- 4) No additional point will be added to Claimant's May 2012 PAS evaluation score. 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 19<sup>th</sup> day of October 2012.**

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