



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

January 13, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 28, 2011. Your hearing request was based on the Department of Health and Human Resources' reduction of homemaker hours under the Aged and Disabled Waiver Program, based on a level of care determination.

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, §501.3.2.1; §501.3.2.2)

The information submitted at the hearing revealed that the Department was correct in its determination of your level of care and corresponding homemaker hours.

It is the decision of the State Hearing Officer to **uphold** the Department's determination of homemaker hours under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
-----, WVMi

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2314

**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 January 13, 2012, 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 December 28, 2011 on a timely appeal, filed October 17, 2011.

All persons offering testimony were placed under oath.

II. PROGRAM PURPOSE:

The 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 witness
-----, Claimant's witness
-----, Claimant's witness
-----, Claimant's witness
Kay Ikerd, Department representative
-----, 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 homemaker hours under the Aged and Disabled Waiver Program.

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 October 5, 2011
- D-3 Notice of Decision, dated October 6, 2011
- D-4 Notice of Decision, dated October 13, 2011
- D-5 Letter from [REDACTED] D.O., dated April 6, 2011

VII. FINDINGS OF FACT:

- 1) Claimant is an 88-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on October 5, 2011 (Exhibit D-2).
- 2) The Department issued an initial Notice of Decision to the Claimant on or about October 6, 2011 (Exhibit D-3), and a final Notice of Decision on October 13, 2011 (Exhibit D-4). The level of care determination on both documents is the same. The October 13, 2011 notice states, in pertinent part:

You have been determined medically eligible to continue to receive Waiver services.

The number of homemaker service hours approved is based on your medical needs, and cannot exceed 124 hours per month.

- 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) On the October 5, 2011, Pre-Admission Screening, or PAS (Exhibit D-2), ----- – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – assessed 23 points for the Claimant. Eight points were awarded for medical conditions and symptoms, one for vacating, twelve for functional abilities in the home, one for medication administration, and one for prognosis. This point level corresponds to the level of care “C,” and the service limit of 124 hours monthly noted on the decisions (Exhibits D-3 and D-4) issued to the Claimant; this level is a reduction from a level of care “D” established by a level of care change request after the previous year’s PAS, but not a reduction from the level of care established on that PAS itself.
- 5) The Claimant and her witnesses disputed the following areas: the functional areas of *eating*, *bathing*, *continence of bladder*, *continence of bowel*, *transferring*, *walking*, and *vision*, and the professional or technical care area of *continuous oxygen*.
- 6) The proposed areas of *continence of bladder*, *continence of bowel*, *transferring*, and *walking* had been assessed at levels awarding the highest possible points allowable by policy.
- 7) Regarding the area of *eating*, -----, the Claimant’s daughter, testified that the Claimant cannot cook or cut up her food. ----- testified that she assessed the Claimant as requiring physical assistance in this area, and noted that the Claimant can feed herself, but does not require the total care necessary to be assessed at a higher level.
- 8) Testimony from ----- regarding the area of *bathing* noted that the Claimant can lift her arms, but not help with bathing otherwise. ----- testified that she assessed the Claimant as requiring physical assistance in this area, and to assess her at a higher level – requiring total care – would not be correct because by lifting her arms the Claimant can assist somewhat with the bathing process.
- 9) Testimony regarding the area of vision revealed the Claimant has an eye implant that has recently moved, and the Claimant contended that this area should have been assessed as “impaired/not correctable,” instead of “impaired/correctable.” Ms. Ikerd testified that the reviewing nurses are assessing functional abilities in the home, and that vision is assessed in this manner. ----- testified that the Claimant could read from a document presented to her on the day of the PAS.

- 10) -----'s comments regarding the area of *vision* in the October 5, 2011 PAS (Exhibit D-2, page 8 of 9) state, in pertinent part:

VISION:

MEMBER WEARS GLASSES AND STATES SHE HAS GLAUCOMA. MEMBER REPORTS SHE IS NOT ABLE TO SEE TO READ THE SMALL LETTERS BUT IS ABLE TO USE A MAGNIFYING GLASS BUT WAS ABLE TO SEE TO READ THE LARGE LETTERS ON THE ADULT ABUSE PAMPHLET.[sic]

- 11) Testimony regarding the professional or technical care need area of continuous oxygen revealed that the Claimant uses oxygen "ninety percent of the time." Ms. Ikerd clarified that continuous oxygen use means usage at all times.

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 23 points on her October 5, 2011, PAS, and was awarded a level of care 'C.' To be awarded a level of care 'D,' a minimum of 26 points is required. Testimony on the Claimant's behalf proposed areas – *continence of bladder, continence of bowel, transferring, and walking* – that were assessed at levels awarding the highest possible points allowable to the Claimant by policy. No further consideration of these areas was given.
- 2) Testimony on the Claimant's behalf revealed that the Claimant uses oxygen, but not at all times. The Claimant should not have been assessed as requiring *continuous oxygen* if she uses oxygen "ninety percent of the time." The Department's assessment in this area is correct.
- 3) Testimony regarding the areas of *eating* and *bathing* revealed the assessment of the Department to be correct. In both areas, testimony on the Claimant's behalf presented the limitations of the Claimant, but not to a degree that warrants an assessment of "total care," as opposed to the Department's assessment of "physical assistance." The undisputed testimony of the Department's reviewing nurse noted that the Claimant is able to provide some, albeit limited, assistance in both areas. The Department assessed both *eating* and *bathing* correctly.
- 4) Testimony regarding vision revealed the Claimant was administered a simple vision test by the reviewing nurse that established vision corrected to an acceptable level for functional ability in the home. The Department assessed the area of *vision* correctly.

- 5) With no additional points revealed through evidence or testimony, the Department's determination of the Claimant's level of care and homemaker hours for the Aged and Disabled Waiver Program is correct.

IX. DECISION:

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

**Todd Thornton
State Hearing Officer**