



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

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

June 5, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 10, 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 "B" care.

It is the decision of the State Hearings Examiner to **Uphold** 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
[REDACTED] Coordinating Council for Independent Living, [REDACTED] WV

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

IN RE: -----

Claimant,

v.

ACTION NO.: 12-BOR-939

**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 concluded on June 5, 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 by telephone conference call on May 10, 2012, on a timely appeal filed March 7, 2012.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver (ADW) is administered by the West Virginia Department of Health & 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

-----, Claimant's Daughter and Representative

██████████ Coordinating Council for Independent Living, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Melissa Bell, 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 February 14, 2012
- D-3 Notice of Decision dated March 2, 2012
- D-4 Pre-Admission Screening (PAS) Form dated March 23, 2011

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

Aged and Disabled Home and Community Based Waiver Services Policy Manual
Chapter 501.5.1.3 states in part:

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.

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

The member will be given two weeks to submit supplemental medical information to APS Healthcare/IRG; supplemental information received by APS Healthcare/ IRG is given to the reviewing RN. Information submitted after the two-week period will not be considered.

- 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 February 14, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's daughter and she were present for the

PAS. Claimant was awarded a total of 16 points on the PAS and was approved for Level B of care. WVMI reported its findings to Claimant in a Notice of Decision dated March 2, 2012. (Exhibit D-3.)

- 3) Claimant's Representative asserted that Claimant should have received three more points on her PAS. She stated Claimant should have received these additional points on item #23, Medical Conditions/Symptoms for (a) angina at rest, (b) angina during exertion and (c) dyspnea.
- 4) According to the February 14, 2012 PAS (Exhibit D-2), no points were awarded for the medical conditions of angina at rest, angina during exertion or dyspnea. Department's Representative stated that ADW Program policy requires a physician's diagnosis or a medication meant specifically to treat that condition in order for her to award a level-of-care point for any medical condition. She stated that in 2011, Claimant had a physician's diagnosis for each of these conditions, and received level-of-care points for these conditions on her previous PAS conducted on March 23, 2011. (Exhibit D-4.) She stated that in the absence of a physician's diagnosis for each of these conditions, the WVMI nurse could not award a level-of-care point on the February 14, 2012 PAS. Department's witness testified that she noted Claimant had a medication, Norvasc, which could be used to treat angina, but is also used to treat high blood pressure, for which Claimant had a diagnosis. Department's witness stated that she found no other medications specifically for angina, or for dyspnea.
- 5) Claimant's witness, her case manager from Coordinating Council for Independent Living, testified that she did not receive her copy of the February 14 PAS (Exhibit D-2) until February 24, 2012. She testified that she obtained a statement from Claimant's primary care physician indicating Claimant was under his care for angina, shortness of breath [dyspnea], osteoarthritis and left-sided weakness. She stated she faxed this information to WVMI on March 14, 2012.
- 6) Department's Representative noted that she did not have a copy of this fax in her documentation for this hearing. She suggested that WVMI probably did not include this with the rest of the documentation because the WVMI nurse conducted the PAS on February 14, 2012, and Claimant's witness stated she faxed the additional information on March 14. She stated that policy indicates additional information must be received within two weeks of the PAS date in order to be included. Claimant's witness responded that she did not receive a copy of the PAS until February 24, 2012, so she obtained the additional information from Claimant's physician and forwarded it to WVMI as soon as she received it.

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 February 14, 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) No additional level-of-care points will be added to the PAS score for the medical conditions of angina at rest, angina during exertion or dyspnea. The WVMi nurse who conducted the February 14, 2012 PAS did not receive in a timely fashion the information which may have supported the assessment of additional points for these medical conditions.
- 3) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 16 points. Claimant meets the medical criteria required to receive a Level B of care.

IX. DECISION:

It is the decision of the State Hearing Examiner to **uphold** the decision 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 5th day of June 2012.

Stephen M. Baisden
State Hearing Examiner