



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 12, 2012

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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 "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 Hearings 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  
Public Partnerships, LLC, [REDACTED] WV

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

**IN RE:     -----**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-951**

**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 May 10, 2012, on a  
timely appeal filed March 14, 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

-----, Claimant's Wife and Representative

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative  
Lee Ann Beihl, 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 February 15, 2012
- D-3 Notice of Decision dated March 1, 2012
- D-4 Pre-Admission Screening (PAS) Form dated March 11, 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 15, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's daughter and she were present for the PAS. Claimant was awarded a total of 23 points on the PAS and was approved for

Level C of care. WVMi reported its findings to Claimant in a Notice of Decision dated March 1, 2012. (Exhibit D-3.)

- 3) Claimant's Representative asserted that Claimant should have received six more 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 and (k) vision.
- 4) **Eating** – The February 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 able to feed himself; unable to cut his food with a knife. He was eating during PAS without difficulty." Claimant's Representative argued that Claimant was able to eat with a spoon, but he could not use a fork or a knife. Department's Representative stated that in order to rate Claimant at level 3 for this functional ability, the assessing nurse would have to determine that Claimant was unable to feed himself at all, and the nurse noted on the PAS that Claimant was eating while the PAS was being conducted.
- 5) **Bathing** – The February 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] requires assistance on/off shower chair; he is able to wash his face, right side of torso to knees, needs assistance with back, feet, legs and left side of body." Claimant's Representative argued that Claimant was able to wash some parts of his body, but not well. She added that she or her daughters sometimes have to rewash areas that he has already washed because he does not wash himself very well. Department's Representative stated that in order to rate Claimant at level 3 for this functional ability, the assessing nurse would have to determine that Claimant was not able to participate in any way in his bathing, and she noted on the PAS that Claimant did wash parts of his body himself.
- 6) **Dressing** – According to the February 2012 PAS (Exhibit D-2), Claimant was rated at level 2 and one point was awarded for this functional ability. The "Nurse's overall comments" section states as follows: "[Claimant] demonstrated ability to raise [left upper extremity] over head and inability to raise [right upper extremity] off waist; demonstrated ability to move [left lower extremity] and inability to move [right lower extremity]. He requires assistance with upper and lower body clothing, socks/shoes." Claimant's Representative stated that Claimant can put on his left shoe, but not his right. She added that Claimant cannot put his right arm into his shirt sleeve, but he can put his left arm into his shirt sleeve. Department's Representative stated that the only way Claimant could receive any more than one point for this ability, he would not be able to participate in any way in dressing.

- 7) **Grooming** – The February 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 able to care for his teeth with assistance; requires assistance with hair care, shampooing/rinsing, fingernails, foot/toenail care.” Claimant’s Representative stated that she let Claimant do some grooming activities for himself, but she had to watch him carefully to be sure he performed these functions thoroughly. Department’s witness Representative stated that in order to rate Claimant at level 3 for this functional ability, the assessing nurse would have to determine that Claimant was not able to participate in any way in his grooming, and the nurse noted on the PAS that Claimant performed these activities “with assistance.”
- 8) **Orientation** – The February 2012 PAS (Exhibit D-2) rated Claimant at level 2, intermittently disoriented, and gave him one point for this functional ability. The “Nurse’s overall comments” section states as follows: “[Claimant] alert during PAS, does not know month/year, knows self and family.” Claimant’s Representative argued that if Claimant were asked if he knew himself or someone in his immediate family, he likely would answer that he did, but if one were to ask him his own name or the name of a particular family member, he would not be able to answer. She stated he calls her “mommy” or if her mother comes for a visit, he calls her “mommy.” She stated that he does not know his street address, but he can say that he is home. She added that if she takes him to her mother’s home or someone else’s home, he says that he is home while there as well. Department’s Representative stated that in order to rate Claimant at level 3 for this functional ability, the assessing nurse would have to determine that Claimant was not oriented to person, place or time. She stated that Claimant did demonstrate some knowledge of his person and his family, he did know his name, and as such the assessing nurse had to assess him as intermittently disoriented rather than totally disoriented.
- 9) **Vision** – The February 2012 PAS (Exhibit D-2) rated Claimant at level 1, not impaired, and assessed no level-of-care points for this functional ability. The “Nurse’s overall comments” section states as follows: “[Claimant] is able to see TV, [history of] cataract removal, unable to read since [stroke].” Claimant’s Representative argued that Claimant must sit very close to the family’s television in order to see it. Department’s Witness testified that she rated Claimant at level 3 and assessed him with two level-of-care points on the February 2011 PAS (Exhibit D-4) but he had cataract surgery before that PAS was conducted. She added that for the February 2012 PAS he had recovered from the cataract surgery and could see the television. Claimant’s Representative stated that the assessing nurse asked the Claimant if he could see the television itself, not if he could see the television picture well enough to determine what was happening on the screen.
- 10) Department’s Witness testified that she performed Claimant’s February 2011 PAS. (Exhibit D-4.) She testified that at that time, Claimant was not able to participate in several areas of his functional abilities, such as eating, bathing, dressing and grooming because he had suffered a series of strokes. She stated that when she

conducted the February 2012 PAS (Exhibit D-2), she noted that he had improved in his functional abilities. She added that because of his improvement, she rated his abilities in these areas higher in 2012 than in 2011.

#### **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 23 points as the result of a PAS completed by WVMi on February 15, 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) No additional points will be assessed for eating. Department's witness recorded on the February 2012 PAS that Claimant was eating independently while she conducted the PAS, and she would have had to determine that he could not feed himself at all in order to assess a second point for this functional ability.
- 3) No additional points will be assessed for bathing. Department's witness testified and recorded on the February 2012 PAS that Claimant participated in his bathing, and she would have had to determine that he required total care in bathing in order to assess a second point for this functional ability.
- 4) No additional points will be assessed for dressing. Department's witness testified and recorded on the February 2012 PAS that Claimant participated in his dressing, and she would have had to determine that someone else had to completely dress him in order to assess a second point for this functional ability.
- 5) No additional points will be assessed for grooming. Department's witness testified and recorded on the February 2012 PAS that Claimant did some of his own grooming, and she would have had to determine that he could not perform any grooming activities in order to assess a second point for this functional ability.
- 6) No additional points will be assessed for orientation. Department's witness testified and recorded on the February 2012 PAS that Claimant was intermittently disoriented but knew his name and some of his family members. She would have had to determine that he was completely disoriented to person, place and time in order to assess him with another level-of-care point for orientation.
- 7) One additional level-of-care point will be assessed for vision. Department's witness testified and recorded on the February 2012 PAS that Claimant could see his television, while Claimant's Representative pointed out that Claimant could see the television itself, but the assessing nurse did not determine if Claimant could see the television picture well enough to determine what the screen was depicting.

- 8) One additional point will be added to Claimant's February 2012 PAS evaluation score, increasing it from 23 to 24 points. Claimant meets the medical criteria required to receive a Level C 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 "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 12<sup>th</sup> day of June 2012.**

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