



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

August 4, 2011

-----For:-----

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your brother's hearing held July 12, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to reduce his level of care hours from Level "D" to Level "C."

In arriving at a decision, the State Hearings 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.

Eligibility for the Aged/Disabled Waiver program is based on current policy and regulations. These regulations provide that number of homemaker service hours is determined based on the Level of Care (LOC). The Level of Care 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/hours which is reviewed and approved by WVM (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.3).

The information submitted at this hearing revealed that your brother meets the medical criteria required for Level "C" care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your brother's homemaker service hours under the Aged and Disabled Waiver Program to Level "C."

Sincerely,

Stephen M. Baisden  
State Hearings Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Kay Ikerd, RN, WV Bureau of Senior Services  
[REDACTED]

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

**IN RE:**       -----

**Claimant,**

**v.**

**ACTION NO: 11-BOR-1099**

**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 August 4, 2011 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 July 12, 2011 on a timely appeal filed April 19, 2011. This hearing was originally scheduled for July 13, 2011, but was rescheduled at the Department's request.

**II. PROGRAM PURPOSE:**

The Program entitled Aged/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's Sister and Guardian

Angel Khosa, 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.

This Hearing was conducted by telephone conference call.

The Hearing Examiner placed all participants under oath at the beginning of the hearing.

**IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in the decision to reduce Claimant's homemaker hours from a Level "D" to a Level "C."

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Waiver Policy Manual, chapter 501.3.2.1 and chapter 501.3.2.2.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community Based Services Waiver Policy Manual Chapter 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) Form dated April 6, 2011
- D-3 Notice of Decision dated April 18, 2011

**VII. FINDINGS OF FACT:**

- 1) Department's representative read into the record the applicable policy for this hearing. (Exhibit D-1.) Aged/Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and 501.3.2.2 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/Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.3.1 (e) states in part:

When the home visit is made, the QIO RN, through observation and/or interview process, completes the PAS (Attachment 14). The RN will record observations and findings regarding the applicant's level of function in the home. RNs do not render medical diagnoses. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

- 2) Department's witness testified that she conducted a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant on April 6, 2011. (Exhibit D-2.) On the section of the PAS labeled "Physician Recommendation," the document lists Claimant's primary diagnosis as "Mental retardation." 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 April 18, 2011. (Exhibit D-3.)
- 3) Claimant's guardian testified that Claimant should have received three more points on his PAS. She testified Claimant should have received these additional points on item #26, Functional Abilities, for (c) dressing, (g) orientation and (i) walking.

**Dressing** – Claimant’s guardian testified that at the time of the PAS, Claimant could dress himself with the assistance of others. She stated that since the PAS was conducted, his ability to dress himself has deteriorated and he has to be dressed by others. Department’s representative stated that at the time of the PAS, Claimant’s guardian reported that he could dress himself as long as someone helped him with buttons and/or snaps, so she assessed him as level 2, one person assistance, and awarded one point.

**Orientation** – Claimant’s guardian testified that Claimant should be awarded another point for this functional ability because his orientation to person, place and time has deteriorated. She stated that on outings, he forgets where he is and where he is going within minutes of leaving the home. On the PAS section labeled, “Nurse’s overall comments,” the assessing nurse has written, “Sister says that he gets confused. She says that he know [sic] where he is and who people are.” Claimant was assessed as intermittently disoriented and was awarded one point. Department’s representative testified that she could not consider any deterioration that may have occurred since the PAS was conducted for the purposes of this hearing.

**Walking** – Claimant’s guardian testified that Claimant now needs two people to assist him in walking. On the PAS section labeled, “Nurse’s overall comments,” the assessing nurse has written, “Observed [Claimant] walk with his walker . . .” Claimant was assessed with one point.

- 4) Claimant’s guardian testified that she was present when the PAS was conducted. She testified that she thought the assessing nurse conducted the PAS and evaluated her brother’s condition correctly. She stated that since the PAS was completed, her brother’s condition and functional abilities have deteriorated significantly. Department’s representative asserted that any deterioration in Claimant’s condition should not be considered for the purposes of this hearing.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that an individual’s Level of Care for the Aged/Disabled Waiver Program is determined by the number of points obtained on the PAS assessment tool. The Claimant was awarded 23 points as the result of a PAS completed by WVMI in April 2011. This places Claimant at a level of care of “C.” In order to receive a level of care of “D,” Claimant needs at least 26 points on the PAS.
- 2) Claimant’s guardian testified that she was present for the PAS and felt the assessing nurse conducted it correctly. She provided no substantial testimony or evidence to warrant the awarding of more points on the PAS.

- 3) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 23 points. He meets the medical criteria required to receive a Level C of care.

**IX. DECISION:**

It is the decision of the State Hearing Officer 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 4<sup>th</sup> day of August 2011.**

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**Stephen M. Baisden  
State Hearing Officer**