



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

November 8, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 28, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your level of care hours from Level "C" to Level "B."

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 you meet the medical criteria required for Level "B" care.

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

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-1629

**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 November 8, 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 October 28, 2011 on a timely appeal filed July 11, 2011. This hearing was originally scheduled for September 9, 2011, but was rescheduled at the Claimant's and 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

-----, [REDACTED] Claimant's Representative

-----, [REDACTED] Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative

Karen Keaton, 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 at the [REDACTED] Office of the WV Department of Health and Human Resources, with Department representative and witness appearing 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 "C" to a Level "B."

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 June 28, 2011
- D-3 Notice of Decision dated June 30, 2011
- D-4 Faxed statement from Claimant's physician, [REDACTED] M.D., dated September 21, 2011

VII. FINDINGS OF FACT:

- 1) Department's representative entered 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 June 28, 2011. (Exhibit D-2.) On the section of the PAS labeled "Physician Recommendation," the document lists Claimant's primary diagnosis as "Cerebral palsy." Claimant was awarded a total of 15 points on the PAS and was approved for Level B of care. WVMi reported its findings to Claimant in a Notice of Decision dated June 30, 2011. (Exhibit D-3.)
- 3) Claimant's representative asserted that Claimant should have received two more points on her PAS. She stated Claimant should have received these additional points on item #26, Functional Abilities, (e) bladder continence and (j) wheeling.

Bladder Continence – The June 28 PAS (Exhibit D-2) rated Claimant at level 2, occasionally incontinent, and gave her one point. The section of the PAS labeled "Nurse's overall comments" states as follows: "Continence: Bowel/Bladder: Wears protective garments when going out. Wets self 2x/wk. Problem w/ constipation [due to] medication. Denies fecal soiling or total loss of bowel content." Department's representative submitted into evidence a statement from Claimant's primary care physician, [REDACTED] M.D., dated September 21, 2011. (Exhibit D-4.) This statement reads as follows: "Suffers from bowel incontinence 2-3 [times]/week, bladder incontinence 2-3 [times]/week . . ." Claimant testified that she has daily bladder accidents, and sometimes more than once per day. Claimant's witness, her homemaker, testified that she had daily accidents.

Wheeling – The June 28 PAS (Exhibit D-2) rated Claimant at level 2, wheels independently, and did not give her a point for this functional ability. The section of the PAS labeled "Nurse's overall comments" states as follows: "Wheeling: Uses motorized [wheelchair] daily. Denies need for situational assistance." Claimant's representative asserted that Claimant should be awarded a point for this functional ability because she lives in a mobile home and the hallway and doors are very narrow. Her representative argued that Claimant's wheelchair often gets stuck as she tries to get through doorways and the hallway of her home. The statement from Claimant's primary care physician (Exhibit D-4) reads, ". . . Needs assistance with . . . situational assistance when using wheelchair." Claimant testified that when she ordered her motorized wheelchair, she ordered a model she thought would be small enough to help her get around her home. She stated that when it was delivered, it was not the model she requested. She added that it was too wide and too long to maneuver easily around her home.

- 4) Department's representative objected to the inclusion of the statement from Claimant's physician. She argued that the PAS was completed in June 2011, while the statement from Dr. [REDACTED] was not submitted until September 2011, three months later. She added that this statement was not available to the reviewing nurse at the time the PAS was conducted or shortly thereafter. Since this statement was submitted nearly three months after the PAS was conducted, it is not relevant to this decision.

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 15 points as the result of a PAS completed by WVMI in June 2011. This places Claimant at a level of care of "B." In order to receive a level of care of "C," Claimant needs at least 18 points on the PAS.
- 2) Claimant's representative argued that Claimant should have been awarded points for continence and wheeling.
- 3) No points will be awarded for continence. Claimant was assessed at a level 2, occasionally incontinent, and received one point for this functional ability. There was no information made available to the assessing nurse at the time of the PAS to indicate that she had more than 2 to 3 bladder accidents per week.
- 4) No points will be awarded for wheeling. Claimant testified that there were problems in her home concerning her motorized wheelchair. While it does seem that Claimant's wheelchair is not appropriate for Claimant's home, the purpose of the PAS is to assess Claimant's ability to use her wheelchair, not to determine if her wheelchair is too big for her home. There was no testimony or evidence offered to support Claimant's contention that she could not use her wheelchair.
- 5) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 15 points. She meets the medical criteria required to receive a Level B 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 "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 8th day of November 2011.

**Stephen M. Baisden
State Hearing Officer**