



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

January 26, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 6, 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 your 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 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] Sutton, WV

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

Claimant

v.

Action Number: 10-BOR-2195

**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 26, 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 January 6, 2011 on a timely appeal filed October 26, 2010.

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 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

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Kim Sang, 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 "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 October 12, 2010
- D-3 Notice of Decision dated October 14, 2010

VII. FINDINGS OF FACT:

- 1) Department's representative asked that judicial notice be taken of 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

- 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 October 12, 2010. (Exhibit D-2.) Claimant was awarded a total of 16 points on the PAS and was approved for Level B of care. WVMi reported its decision to Claimant in a Notice of Decision dated October 14, 2010. (Exhibit D-3.)
- 3) Claimant's witness testified that Claimant should have received five more points on her PAS. She stated Claimant should have received additional points on item #26, Functional Abilities, for (a) eating, (b) bathing, (c) dressing, and (d) grooming. She testified that Claimant should have received one point for item #28, administering medications.

Eating – Claimant testified that she was no longer able to cook as she once did. She stated that when she attempts to cut or peel various foods, her hands cramp and she has to quit. Department's representative testified that the PAS only assesses whether or not the client can feed herself after the meal is prepared, and food preparation is not part of what may be considered to establish a level-of-care point. Claimant stated during the hearing and told the nurse who performed the PAS that she was able to cut up and eat her meals.

Bathing – Claimant testified that after breast surgery, it caused her pain to reach up and wash her hair. Department's witness testified that she evaluated Claimant at level II in the area of bathing and gave her one point on her PAS. She added that in order to assess Claimant at a higher level and give her more points, Claimant would not be able to participate in her own bathing at all.

Dressing – Claimant testified that she had trouble getting dressed and on most days, someone had to help her fasten her bra. Department's witness testified that she assessed Claimant at Level II in this functional ability and gave her one point. She added that in order to assess Claimant at a higher level and give her another point, Claimant would need total care in dressing.

Grooming – Claimant testified that she has trouble reaching up in order to comb and/or brush her hair, and this problem is exacerbated when the weather is cold. She added that she could clean her own dentures. Department's witness testified that she assessed Claimant at a Level II in this functional ability and gave her one point. She added that in order to assess Claimant at a higher level and give another point, Claimant would not be able to groom herself at all.

Administering Medications – Claimant testified during the hearing that she places her own medications in her weekly medication planner box, and that she is able to take her medications by mixing them in applesauce. She testified that she sometimes forgets to take her medications. Department's representative testified that Claimant did not receive any points on the PAS for administering medications. She stated that when she conducted the PAS with Claimant, Claimant told her that she places her medications in her planner and takes them mixed in applesauce, but she did not indicate during the PAS that she occasionally forgot to take them. She added that she reviewed her findings with Claimant when she completed the PAS, and Claimant agreed with her conclusions.

Claimant and her representative offered no substantial medical evidence to support their contention that Claimant should have received more points on her PAS than she was originally awarded.

- 4) Claimant's representative testified that due to scheduling conflicts, neither she nor another representative from Claimant's case management agency, nor homemakers from Claimant's home health agency, were able to be with Claimant while the PAS was conducted. She stated that if representatives from either of these agencies were present for the PAS, they may have helped to remind Claimant of certain problems or difficulties that she was experiencing.

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 16 points as the result of a PAS completed by WVMI in October 2010. 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) No additional PAS points for eating will be awarded because Claimant's chief complaint regarding this functional ability was that she could not prepare her food as well as she once did. Food preparation is not part of the criteria for this ability.
- 3) No additional PAS points for bathing will be awarded because Claimant received a level II, one point, for this functional ability. To be assessed at a higher level and receive another point, Claimant would require total care and not be able to participate in this activity at all.
- 4) No additional PAS points for dressing will be awarded because Claimant received a level II, one point, for this functional ability. To be assessed at a higher level and receive another point, Claimant would require total care and not be able to participate in this activity at all.
- 5) No additional PAS points for grooming will be awarded because Claimant received a level II, one point, for this functional ability. To be assessed at a higher level and receive another point, Claimant would require total care and not be able to participate in this activity at all.
- 6) No additional PAS points for administering medications will be awarded because Claimant testified that she was able to place her medications in a medicine planning box and she was able to mix her medications with applesauce and consume them in that manner. She did not report to the assessing nurse that she occasionally forgot to take her medications.
- 7) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 16 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 26th day of January 2011.

Stephen M. Baisden
State Hearing Officer