



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704

Rocco S. Fucillo
Cabinet Secretary

July 17, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 6, 2012. Your hearing request was based on the Department of Health and Human Resources' reduction of level of care for Aged and Disabled Waiver services.

In arriving at a decision, the State Hearing 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.

The Aged and Disabled Waiver (ADW) Program is based on current policy and regulations. One of these regulations specifies that for the ADW Program, the number of homemaker service hours is determined based on the level of care. The level of care is determined by evaluating the Pre-Admission Screening (PAS) form and assigning points to documented medical conditions that require nursing services. For an individual to be awarded the level of care designated as level "C," a minimum of 18 points must be determined from the PAS. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.5.1.1(a); §501.5.1.1(b))

The information submitted at the hearing revealed that the Department correctly assessed your level of care for ADW services.

It is the decision of the State Hearing Officer to **uphold** the Department's determination of your level of care for ADW services.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Melissa Bell, WVMI
Public Partnerships, LLC, Case Management Agency

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1244

**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 July 17, 2012, 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 6, 2012, on a timely appeal, filed April 27, 2012.

All persons offering testimony were placed under oath.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (hereinafter "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's representative
Sara Birkhead, Department representative
Melissa Bell, Department witness

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its determination of the Claimant's level of care for Aged and Disabled Waiver services.

V. APPLICABLE POLICY:

Chapter 501: Aged & Disabled Waiver Services Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501: Aged & Disabled Waiver Services Manual, §§501.5.1.1(a) – 501.5.1.1(b)
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services, dated March 21, 2012
- D-3 Notice of Decision, dated April 3, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant is an 80-year old male recipient of Aged and Disabled Waiver (ADW) services for whom a reevaluation of medical eligibility was completed on March 21, 2012 (Exhibit D-2).
- 2) On or about April 3, 2012, the Claimant was mailed a notice of decision (Exhibit D-3) stating that he continued to be medically eligible for the ADW program with a monthly budget limit set at \$1379.62. Sara Birkhead, representative for the Department's Bureau of Senior Services, testified that the Claimant is a Personal Options participant. As a result, the Department's level of care determination for the ADW program corresponds with a monthly budget limit. The budget limit of \$1379.62 for the Claimant represents a level "B," and the Claimant had previously received ADW services at a level "C" with a monthly budget limit of \$1777.66.
- 3) Policy from Chapter 501: Aged & Disabled Waiver Services Manual, §§501.5.1.1(a) – 501.5.1.1(b), states, in pertinent part:

501.5.1.1(a) Service Level Criteria

There are four Service Levels for Personal Assistance/Homemaker services. Points will be determined as follows based on the following sections of the PAS:

Section	Description of Points
#23	Medical Conditions/Symptoms – 1 point for each (can have total of 12 points)
#24	Decubitus – 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 at Level 3 or Level 4 in order to get points 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.

501.5.1.1(b) Service Level Limits

Traditional Service Levels

Level	Points Required	Range of Hours Per Month (for Traditional Members)
A	5-9	0 – 62
B	10-17	63 – 93
C	18-25	94 – 124
D	26-44	125 – 155

- 4) Melissa Bell – a Registered Nurse employed by West Virginia Medical Institute (“WVMI”) – conducted the March 21, 2012, Pre-Admission Screening (“PAS”) form (Exhibit D-2) regarding the Claimant and assessed 17 points for the Claimant. Eight

points were awarded for medical conditions and symptoms, one for vacating, seven for functional abilities in the home, and one for medication administration. Based on this point level the Claimant was assessed at a level “B” and the notice of decision (Exhibit D-3) was issued to the Claimant.

- 5) -----, the Claimant’s daughter and representative, proposed two additional areas in which she felt the Claimant should have been awarded points on the PAS: *eating* and *orientation*.
- 6) Regarding the functional area of *eating*, ----- testified that the Claimant can cut up the foods that she prepares for the Claimant because she only prepares soft foods for him; the Claimant cannot cut up foods that are not soft. Ms. Bell’s PAS comments regarding eating are as follows:

EATING: Member reports HM/daughter prepares meals, member is able to prepare a sandwich. Member reports he is able to sit and peel foods and cut of [*sic*] meats, member is able to feed self.

- 7) Regarding the functional area of *orientation*, ----- testified that the Claimant is not oriented most of the time, and has trouble remembering. Ms. Bell’s PAS comments regarding orientation are as follows:

ORIENTATION: Member was alert and oriented during assessment. Member was able to state all personal information correctly. Member/daughter denies disorientation.

- 8) ----- testified that she was present during the assessment of the Claimant, but did not provide the information regarding eating and orientation that she provided during this hearing because it was “awkward” to deny her father.

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 assessed on the PAS assessment tool. The Claimant received 17 points on his March 21, 2012, PAS, and was awarded a level of care ‘B.’ To be awarded a level of care ‘C,’ a minimum of 18 points is required.
- 2) The Claimant proposed two areas – *eating* and *orientation* – for additional PAS points. Based on the information provided during the assessment, the Department correctly determined the number of level of care points for these areas. The Claimant and her

daughter were present for the assessment and were expected to fully disclose the condition of the Claimant at that time.

- 3) With no additional points revealed through testimony and evidence, the Department's determination of level of care for ADW services for the Claimant is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's determination of level of care under the Aged and Disabled Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of July, 2012.

**Todd Thornton
State Hearing Officer**