



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

Rocco S. Fucillo  
Cabinet Secretary

July 12, 2012

-----  
-----  
-----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 5, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your level of care hours from Level "C" to Level "B."

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 "B" 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 "B."

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  
Central WV Aging Services, [REDACTED] WV

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

**IN RE:     -----**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1249**

**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 July 5, 2012, on a  
timely appeal filed April 27, 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's Daughter and Representative

Sara Birkhead, WV Bureau of Senior Services, Department's Representative  
Brenda Myers, 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 "C" to a Level "B."

**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 March 28, 2012
- D-3 Notice of Decision dated April 2, 2012

**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

- 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 March 28, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's daughter, Claimant's Case Manager from Central WV Aging Services and she were present for the PAS. Claimant was awarded a total of 17 points on the PAS and was approved for Level B care. WVMI reported its findings to Claimant in a Notice of Decision dated April 2, 2012. (Exhibit D-3.)
- 3) Claimant's Representative asserted that Claimant should have received three more points on her PAS. She stated Claimant should have received these additional points on item #26, Functional Abilities, for (f) continence of bowels, (h) transferring, and (i) walking.
- 4) ***Continence of bowels*** – The March 2012 PAS (Exhibit D-2) rated Claimant at level 2, occasionally incontinent, and gave her one point for this functional ability. The "Nurse's overall comments" section of the PAS states as follows: "[Claimant] states she has occasional accidents with her bowels and I asked her how often and she said maybe once per week." Claimant's Representative argued that Claimant has been having bowel accidents three times per week or more since she returned home from a hospital stay after the PAS assessment. She added that her mother now is completely incontinent of bowel and bladder.

- 5) **Transferring** – The March 2012 PAS (Exhibit D-2) rated Claimant at level 2, supervised/assistive device, and gave her one point for this functional ability. The “Nurse’s overall comments” section states: “. . . I asked [Claimant] to transfer from seated position to standing so I could observe and she placed each hand on arm rest of chair and pushed against as she stood and then she took hold of walker to support herself. She then sat back down as I had already seen her walk.” Claimant’s Representative stated that Claimant’s ability to transfer depends on the height of the chair. She stated that if she were to put a pillow on the seat of Claimant’s chair, she would be able to stand up because she would not have so far to go, but if she took the pillow out from underneath her mother, Claimant would not be able to do so. She stated that since her mother has come home from the hospital, she cannot transfer at all.
- 6) **Walking** – According to the March 2012 PAS (Exhibit D-2), Claimant was rated at level 2, supervised/assistive device, and one point was awarded for this functional ability. The “Nurse’s overall comments” section states: “[Claimant] hollered [sic] out for me to come in and was standing in the middle of the room walking when I walked into the apartment. She walks very slowly with walker but her gait was steady.” Claimant’s Representative stated that since Claimant returned home from the hospital, she cannot walk and cannot get out of bed to walk.
- 7) Claimant’s Representative stated that Claimant was hospitalized after the PAS was conducted, and had returned home a few days before the hearing took place. She stated that since she returned home, Claimant has deteriorated in her functional abilities and her ability to perform activities of daily living. She stated that Claimant is unable to walk or transfer since returning home. She stated that Claimant is unable to turn herself in her bed, so the Representative has to do that for her. Claimant’s Representative added that since her mother cannot turn herself, she thinks her mother is developing a decubitus sore, although at the time of the hearing, the skin was not yet broken.

## **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 17 points as the result of a PAS completed by WVMi on March 28, 2012. This places Claimant at a level of care of “B.” In order to receive a level of care of “C,” Claimant needed at least 18 points on the PAS.
- 2) No additional points should be assessed for continence of bowels. Department’s Witness recorded on the March 2012 PAS that Claimant reported having about one bowel accident per week.
- 3) No additional points should be assessed for transferring. Department’s Witness testified and recorded on the March 2012 PAS that Claimant demonstrated her

ability to transfer from sitting to standing and standing to sitting with assistive devices.

- 4) No additional points should be assessed for walking. Department's Witness testified and recorded on the March 2012 PAS that she observed Claimant walking with the assistance of a walker.
- 5) No additional points will be added to Claimant's March 2012 PAS evaluation score. Claimant meets the medical criteria required to receive a Level B 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 "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 12<sup>th</sup> day of July 2012.**

---

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