



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Earl Ray Tomblin  
Governor

Board of Review  
203 E. Third Avenue  
Williamson, WV 25661

Rocco S. Fucillo  
Cabinet Secretary

September 17, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 11, 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 Hearing 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, -----, WV

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

**IN RE:     -----**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1388**

**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 September 11, 2012, on a timely appeal filed May 7, 2012. This hearing was originally scheduled for Wednesday, September 5, 2012, but was rescheduled at Claimant's request.

**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:**

-----, Central WV Aging Services, Claimant's Representative  
-----, Claimant's Witness

Pam Pushkin, RN, WV Bureau of Senior Services, Department's Representative  
Teena Testa, 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 Notice of Decision dated March 22, 2012
- D-3 Pre-Admission Screening (PAS) Form dated March 20, 2012
- D-4 Pre-Admission Screening (PAS) Form dated April 11, 2011

**Claimant's Exhibits:**

- C-1 Letter from Central West Virginia Aging Services, dated July 18, 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 20, 2012. (Exhibit D-3.) She testified that Claimant, Claimant's brother, Claimant's case manager from Central WV Aging Service, Claimant's nurse-case manager and she were present for the PAS. Claimant was assessed with a total of 16 Level-of-Care points on the PAS and was approved for Level "B" care. WVMI reported its findings to Claimant in a Notice of Decision dated March 22, 2012. (Exhibit D-2.)
- 3) Claimant's Representative asserted that Claimant should have received six more Level-of-Care points on his March 20, 2012, PAS. She stated Claimant should have received these additional points on item #26, Functional Abilities, for (c) dressing, (e) continence of bladder, (f) continence of bowel, (h) transferring, (i) walking, and (m) communication.
- 4) ***Dressing*** – The March 2012 PAS (Exhibit D-2) rated Claimant at level 2, physical assistance, and assessed him with one point for this functional ability. The "Nurse's overall comments" section of the PAS states as follows: "[Claimant's Brother] states [Claimant] can put his arms up to get his shirts on. [Claimant's

Brother] states he cannot button buttons nor can he zip his zippers. [Claimant's Brother] states he cannot snap his pants or tie his shoes. [Claimant's Brother] states they put his pants on but [Claimant] is able to lift his leg to get his pants on. [Claimant's Brother] states they have to put his shoes and socks on him." Claimant's Representative stated that on the April 2011 PAS (Exhibit D-4), the narrative description of Claimant's ability to dress himself was very similar. The Nurse's overall comments section of the April 2011 PAS states regarding dressing, "[Claimant's Brother] states [Claimant] sometimes can't put his shirts on. [Claimant's Brother] notes if [Claimant] is on the commode he can pull his pants up but [family members or homemaker] have to adjust this." Claimant's Representative argued that even though both descriptions are similar, Claimant was rated at level 3, total care in 2011 and received two Level-of-Care points. Department's Representative did not provide an explanation as to why Claimant received two Level-of-Care points in 2011 and only one in 2012.

- 5) ***Continence of Bladder*** – The March 2012 PAS (Exhibit D-2) rated Claimant at level 1, continent, and assessed Claimant with no points for this functional ability. The "Nurse's overall comments" section states: "[Claimant's Brother] stated [Claimant] can get to the bathroom every time. [Claimant's Brother] does note [Claimant] does sit down to pee. [Claimant's Brother] states [Claimant] does have accidents when he has a seizure. [Claimant's Brother] notes he hasn't had any seizures in a long time." Claimant's Representative stated that in this functional ability as well as dressing, the descriptions of Claimant's functioning is very similar. She pointed out that on the April 2011 PAS (Exhibit D-4), it was reported that Claimant had bladder accidents when he had seizures, but had not had a seizure in several years. Yet, she added, Claimant was assessed as being occasionally incontinent in 2011 and received a Level-of-Care point. Department's Representative did not explain why there was a discrepancy in Level-of-Care points between 2011 and 2012 when the narrative descriptions of this functional ability were similar.
- 6) ***Continence of Bowel*** – The March 2012 PAS (Exhibit D-2) rated Claimant at level 1, continent, and assessed Claimant with no points for this functional ability. The "Nurse's overall comments" section states: "[Claimant's Brother] states his bowels move daily. [Claimant's Brother] denies he has had any accidents with his bowels. [Claimant's Brother] notes he may have had an accident if he has a seizure. [Claimant's Brother] states last seizure was a couple of years ago." Claimant's Representative stated that again for this ability, Claimant was assessed as level 2, occasionally incontinent and received a Level-of-Care point for bowel incontinence on the April 2011 PAS (Exhibit D-4), when the narrative descriptions of this ability was nearly identical to the description in the March 2012 PAS. Department's Representative did not explain the reasons for the discrepancy in Level-of-Care points between the April 2011 and March 2012 PAS.
- 7) ***Transferring*** – According to the March 2012 PAS (Exhibit D-2), Claimant was rated at level 1, independent, and no points were awarded for this functional

ability. The “Nurse’s overall comments” section states: “[Claimant’s Brother] states [Claimant] is able to get himself in and out of the bed. [Claimant’s Brother] states [Claimant] can get himself on and off the commode. Does not use tub or sink to help him from the commode.” Claimant’s Representative stated that on the April 2011 PAS (Exhibit D-4), the Claimant was assessed as level 2, supervised/assistive device. On the April 2011 PAS, the Nurse’s overall comments section states regarding transferring, “[Claimant’s Brother] states he can get himself in and out of bed. [Claimant’s Brother] notes he can get on and off the commode. [Claimant’s Brother] states he has a sink close by that he uses to help himself up.” Claimant’s Representative stated that on the March 2012 PAS, the assessing nurse wrote as quoted above, “Does not use tub or sink to help him from the commode.” Claimant’s Representative stated she believed the assessing nurse made a clerical error when she typed “Does not use . . .” and mistakenly typed the word “not.” Department’s witness stated that this was not a clerical error and she meant to type “Does not use” in the above-quoted sentence.

- 8) ***Walking*** – According to the March 2012 PAS (Exhibit D-2), Claimant was rated at level 1, independent, and no points were awarded for this functional ability. The “Nurse’s overall comments” section states: “[Claimant’s Brother] states [Claimant] does not hold onto the furniture. [Claimant’s Brother] notes [Claimant] walks like they do. [Claimant’s Brother] notes [Claimant] does not run like he used to do. [Claimant] was in the back room and I asked if I could see him. [Claimant] walked down the hallway to where I was and said hi and went into the other room.” Claimant’s Representative stated that on the April 2011 PAS (Exhibit D-4), Claimant was rated at level 2, supervised/assistive device, for this ability, when the narrative descriptions on the PAS were very similar. The Nurse’s overall comments section of the April 2011 PAS states the following regarding walking, “[Claimant] did get up and walk into the other room. Mother states he does not hold onto the furniture as he walks. [Claimant’s Brother] notes he does use the banister as he walks.”
- 9) ***Communication*** – According to the March 2012 PAS (Exhibit D-2), Claimant was rated at level 3, understandable with aids, and two points were assessed for this functional ability. Claimant’s Representative stated that on the April 2011 PAS, Claimant was rated at level 4, inappropriate/none, and he should have received the same assessment for this one. Department’s Representative stated that two Level-of-Care points were the highest number of points which any individual could receive for this functional ability. She added that regardless of whether Claimant was assessed at level 3 or level 4, he could not receive more than two Level-of-Care points.

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

- 1) Policy stipulates 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 16 points as the result of a PAS

completed by WVMi on May 7, 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) Claimant's Representative argued that Claimant should have received six additional Level-of-Care points, on item #26, Functional Abilities, for dressing, continence of bladder, continence of bowel, transferring, walking and communication.
- 3) No additional point should be assessed for dressing. Department's Witness testified and recorded on the March 2012 PAS that Claimant participates in dressing by lifting his arms and legs as needed. No evidence was submitted to indicate Claimant required total care in dressing.
- 4) No additional points should be assessed for continence of bladder. Department's Witness testified and recorded on the March 2012 PAS that Claimant only had bladder accidents when he had a seizure, and he had not suffered a seizure in a number of years.
- 5) No additional points should be assessed for continence of bowel. Department's Witness testified and recorded on the March 2012 PAS that Claimant only had bowel accidents when he had a seizure, and he had not suffered a seizure in a number of years.
- 6) No additional points should be assessed for transferring. Department's Witness testified and recorded on the March 2012 PAS that Claimant's family members and homemaker denied Claimant needs assistive devices or supervision to transfer from chairs, his bed or the commode.
- 7) No additional points should be assessed for walking. Department's Witness testified and recorded on the March 2012 PAS that she witnessed Claimant walking without supervision or an assistive device.
- 8) No additional points should be assessed for communication. Claimant received the maximum number of points for this functional ability.
- 9) No additional points will be added to Claimant's March 2012 PAS evaluation score. Claimant was assessed with 16 Level-of-Care points on the March 2012 PAS. He 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 proposal 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 17<sup>th</sup> day of September 2012.**

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**Stephen M. Baisden  
State Hearing Examiner**