



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 10, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 16, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your Level of Care hours from Level "D" to Level "C."

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 "C" 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 "C."

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, Charleston, WV

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

IN RE: -----

Claimant,

v.

ACTION NO.: 12-BOR-1567

**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 August 16, 2012, on a
timely appeal filed June 11, 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
-----, RN, Central WV Aging Services, Claimant's Representative
-----, RN, Central WV Aging Services, Claimant's Witness

Pam Pushkin, RN, 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 "D" to a Level "C."

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 May 21, 2012
- D-3 Pre-Admission Screening (PAS) Form dated June 7, 2011
- D-4 Notice of Decision dated June 7, 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 May 21, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's husband, Claimant's case manager from Central WV Aging Service and she were present for the PAS. Claimant was assessed with a total of 21 Level-of-Care points on the PAS and was approved for Level "C" care. WVMI reported its findings to Claimant in a Notice of Decision dated June 7, 2012. (Exhibit D-3.)
- 3) Claimant's Representative asserted that Claimant should have received four more Level-of-Care points on her PAS. She stated Claimant should have received these additional points on item #26, Functional Abilities, for (b) bathing, (g) orientation, (i) walking, and (j) wheeling.
- 4) **Bathing** – The May 2012 PAS (Exhibit D-2) rated Claimant at level 2, physical assistance, 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 a walk-in shower with a small ledge and she will step over into shower with [homemaker] holding onto her for safety and sit on shower chair. She states she can hold onto portion of wash cloth with two fingers on her right hand and have enough grasp to wash off her face. [Homemaker] must wash rest of her body.” Claimant’s Representative argued that due to Claimant’s rheumatoid arthritis, she cannot wash her face with a washcloth. She added that Claimant may be able to rub a washcloth around her face, but not adequately enough to give her face a proper cleansing.

- 5) ***Orientation*** – The May 2012 PAS (Exhibit D-2) rated Claimant at level 1, oriented, and assessed Claimant with no points for this functional ability. The “Nurse’s overall comments” section states: “[Claimant] is alert and oriented x 3. She signed and dated the consent [form] without prompting. She verbalized her address, [date of birth] as well. We discussed disorientation and she states to get track of date she has to use calendar but denies becoming disoriented to person, place or time.” Claimant’s Representative stated that Claimant is not oriented at all times. She stated that Claimant sometimes is disoriented in the mornings, sometimes in the afternoon, and sometimes is so disoriented she cannot speak.
- 6) ***Walking*** – According to the May 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] opened front door and walked back to dining room table and sat in manual wheelchair. She walked independently and did reach out and steady herself with objects occasionally as she walked. Gait is slower than normal pace but steady.” Claimant’s Representative stated that she assists Claimant daily by helping her get out of bed. She stated that she assists Claimant some days more than others.
- 7) ***Wheeling*** – According to the May 2012 PAS (Exhibit D-2), Claimant was rated at level 1, no wheelchair use, and no points were assessed for this functional ability. The “Nurse’s overall comments” section states: “I discussed thoroughly with [Claimant] her use of wheelchair in the apartment and she states she does not use it in the apartment. I asked her if she has to be wheeled from her bedroom to the living room or to the bathroom and she denies.” Claimant’s Representative stated that on “bad days” she wheels Claimant from her bedroom to the bathroom or living room because of her arthritic pain.

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 21 points as the result of a PAS completed by WVMi on May 7, 2012. This places Claimant at a level of care of “C.” In order to receive a level of care of “D,” Claimant needed at least 26 points on the PAS.

- 2) Claimant's Representative argued that Claimant should have received four additional level-of-care points, on item #26, Functional Abilities, for bathing, orientation, walking, and wheeling.
- 3) One additional point should be assessed for bathing. Department's Witness recorded on the May 2012 PAS that Claimant's hands are severely drawn due to her arthritis. Claimant's Representative testified that Claimant cannot adequately wash her face because of her arthritis, and washing her face was the only part of her bathing in which she participated.
- 4) No additional points should be assessed for orientation. Department's Witness testified and recorded on the May 2012 PAS that Claimant was fully oriented to person, place and time. The PAS indicated that Claimant signed and dated certain paperwork without prompting, and that Claimant knew her mailing address and date of birth.
- 5) No additional points should be assessed for walking. Department's Witness testified and recorded on the May 2012 PAS that she observed Claimant walking independently by using household objects to steady herself.
- 6) No additional points should be assessed for wheeling. Department's Witness testified and recorded on the May 2012 PAS that she thoroughly discussed wheeling with Claimant, and Claimant stated she used a wheelchair in her apartment only occasionally.
- 7) One additional point will be added to Claimant's May 2012 PAS evaluation score. Initially, Claimant was assessed with 21 level-of-care points, and the addition of one point raises her total points to 22. However, this additional point does not raise Claimant's PAS score high enough to meet Level "D" care. Claimant meets the medical criteria required to receive a Level "C" 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 "D" to Level "C."

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th day of September 2012.

Stephen M. Baisden
State Hearing Examiner