



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

September 24, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 4, 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 "D," a minimum of 26 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
Angie Hill, WVMH
ResCare Home Care, Case Management Agency

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1679

**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 September 24, 2012, 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 hearing was convened on September 4, 2012, on a timely appeal, filed June 22, 2012.

All persons offering testimony were placed under oath.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (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/witness

-----, Claimant's representative/witness

-----, Claimant's witness

Kay Ikerd, Department representative

Angie Hill, 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 June 7, 2012
- D-3 Notice of Decision, dated June 18, 2012
- D-4 Notice of Decision/Level of Care Change, dated January 25, 2012
- D-5 Pre-Admission Screening for Aged/Disabled Waiver Services, dated May 10, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant is a 60-year old male recipient of ADW services for whom a reevaluation of medical eligibility was completed on June 7, 2012 (Exhibit D-2).
- 2) On or about June 18, 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 homemaker service hours that "...cannot exceed 124 hours per month." This corresponds with a level of care "C." Kay Ikerd, representative for the West Virginia Department of Health and Human Resources' (Department) Bureau of Senior Services – the bureau responsible for administering the ADW program – testified that the level of care "C" represents a reduction from the Claimant's previous level of care, which was level "D." The level "D" was the result of a decision to increase level of care (Exhibit D-4) subsequent to the prior year's assessment (Exhibit D-5) and level of care determination.
- 3) Ms. Ikerd presented the applicable policy for this decision as Chapter 501: Aged & Disabled Waiver Services Manual, §§501.5.1.1(a) – 501.5.1.1(b) (Exhibit D-1). This policy 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) Angie Hill – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – conducted the June 7, 2012, Pre-Admission Screening (PAS) assessment form (Exhibit D-2) regarding the Claimant and assessed 25 points. Five points were awarded for medical conditions and symptoms, one for vacating, fifteen for functional abilities in the home, one for professional and technical care needs, one for medication administration, one for dementia, and one for prognosis. Based on this point level the Claimant was assessed at a level “C” and the notice of decision (Exhibit D-3) was issued to the Claimant.

- 5) Four additional areas were proposed on the Claimant's behalf: *dysphagia*, *hearing*, *bladder incontinence*, and *transferring*.
- 6) -----, the Claimant's sister and representative, testified that the Claimant requires more than one-person assistance with *transferring*. Ms. Ikerd testified that the Claimant is already receiving the maximum number of points available for the area of *transferring*, based on the most recent PAS; a change of assessment in this area from one-person to two-person assistance would not result in an additional point.
- 7) ----- testified that the Claimant has nerve damage in his right ear, and feels that this is not correctable. Ms. Ikerd testified that when the assessing nurses evaluate individuals for the ADW program, they are evaluating functional abilities and not conducting medical evaluations. Because the Claimant was able to hear questions asked of him during the PAS assessment – according to the testimony of Ms. Hill – Ms. Ikerd contends that functionally the Claimant was assessed correctly as “impaired/correctable” for the area of *hearing*.
- 8) Regarding *bladder continence*, ----- testified that “every morning he wakes up soaked.” To clarify, ----- asked ----- if the Claimant has episodes of incontinence at least three times per week, and ----- responded in the affirmative. Ms. Hill testified that ----- was present during the PAS assessment, and that she reviewed her findings with all persons present at the time of the PAS. The findings regarding *bladder continence* noted by Ms. Hill are as follows:

CONT./BLADDER-
MEMBER AND SISTER DENY HE HAS ANY BLADDER
ACCIDENTS. THEY STATE HE USES A URINAL HE KEEPS BY
HIS BED.

- 9) Regarding the medical condition or symptom of *dysphagia*, ----- and ----- testified that the Claimant has problems with swallowing. Ms. Hill testified that to have awarded a point for *dysphagia*, she would have needed a physician's diagnosis or medication prescribed for the condition or symptom. She testified that there was neither in the record. She testified that she did not request confirmation of this diagnosis because the Claimant denied problems with swallowing at the time of the PAS, and that she can only act on what is reported to her. Ms. Hill's PAS notes for this area are as follows:

DYSPHAGIA-
NO [diagnosis] LISTED. MEMBER DENIES. SISTER STATES DIET
IS AS TOLERATED WITH NO ADDED SALT AND HIGH FIBER.
MEMBER STATES HIS APPETITE IS GETTING BETTER.
MEMBER AND SISTER STATE HE LOST 15-20LBS [sic] OVER A
3 MTH [sic] PERIOD DUE TO DIARRHEA AND GALL BLADDER
PROBLEMS.

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 25 points on his June 7, 2012 PAS, resulting in a level of care "C." To be awarded a level of care "D," a minimum of 26 points is required.
- 2) The Claimant proposed four areas – *dysphagia*, *bladder continence*, *hearing*, and *transferring* – for additional PAS points.
- 3) The Claimant received the maximum number of points allowable for *transferring* on the most recent PAS assessment.
- 4) For *dysphagia*, the Claimant denied the condition and did not present a diagnosis. The Department's assessment of this area is correct, given the information provided to the assessing nurse.
- 5) The Department's assessing nurse was able to ask the Claimant questions during the PAS assessment and – with some repeats – obtain responses. The Department's standard of distinction between "correctable" and "not correctable" is a functional one, not a medical one. On this basis, the Department's assessment of *hearing* is correct.
- 6) Regarding *bladder continence*, when the Department's nurse conducted the PAS assessment the Claimant and his sister denied any accidents. The Department correctly assessed this area.
- 7) 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 September 2012.

**Todd Thornton
State Hearing Officer**