



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 21, 2012

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' 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 should have awarded two additional points on the June 4, 2012 PAS, resulting in a total of 18 points and a level of care "C."

It is the decision of the State Hearing Officer to **reverse** 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
Brenda Myers, WVM

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1794

**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 21, 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 11, 2012, on a timely appeal, filed June 14, 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

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

Pam Pushkin, Department representative

Brenda Myers, 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 Notice of Decision, dated June 26, 2012
- D-3 Pre-Admission Screening for Aged/Disabled Waiver Services, dated June 4, 2012
- D-4 Pre-Admission Screening for Aged/Disabled Waiver Services, dated May 12, 2011

Claimant's Exhibit:

- C-1 Correspondence from the Claimant and his physicians

VII. FINDINGS OF FACT:

- 1) The Claimant is a 48-year old male recipient of ADW services for whom a reevaluation of medical eligibility was completed on June 4, 2012 (Exhibit D-3).
- 2) On or about June 26, 2012, the Claimant was mailed a notice of decision (Exhibit D-2) stating that he continued to be medically eligible for the ADW program through the Personal Options model, with a monthly budget that "...cannot exceed \$1379.62." Pam Pushkin, representative for the West Virginia Department of Health and Human Resources' (Department) Bureau of Senior Services, testified that this corresponds with a level of care "B," and represents a reduction from the Claimant's previous level of care "C."
- 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) Brenda Myers – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – conducted the June 4, 2012 Pre-Admission Screening (PAS) assessment form (Exhibit D-3) regarding the Claimant and assessed 16 points. Four points were awarded for medical conditions and symptoms, one for vacating, nine for functional

abilities in the home, one for medication administration, and one for prognosis. Based on this point level the Claimant was assessed at a level “B” and the notice of decision (Exhibit D-2) was issued to the Claimant.

- 5) Three additional areas were proposed on the Claimant’s behalf: medical conditions or symptoms of *significant arthritis*, and the functional abilities of *bathing*, *dressing*, *continence of bowel*, *transferring*, and *orientation*.
- 6) The Claimant testified that he requires assistance with *bathing* and *dressing*, but denied requiring total care. Ms. Myers testified that the Claimant received the level corresponding to “physical assistance” in these areas, and Ms. Pushkin testified that to be credited one level higher in these areas would require “total care.”
- 7) -----, the Claimant’s representative and homemaker, testified that the Claimant suffers from disorientation. The Claimant denied any problems in the area of *orientation*. Ms. Myers credited the Claimant as “oriented” in this area, and noted at the time of the PAS “...he denies becoming disoriented to person, place or time.”
- 8) Regarding the functional ability of *transferring*, ----- testified that the Claimant requires “one-person transfer.” Ms. Myers assessed the Claimant as requiring supervision or an assistive device to transfer. Her PAS notes in this area state, in pertinent part:

He states he reaches out and uses his cane and night stand [*sic*] when he gets out of bed. He states he uses the vanity by the toilet and there is a table near commode as well [*sic*] that he holds onto as he transfers off commode. He pushes against furniture and uses cane as he transfers from furniture [*sic*]

- 9) Regarding the medical condition or symptom of *significant arthritis*, Ms. Myers noted on the PAS that the Claimant “...is uncertain of any [diagnosis] but states MD in New York when he lives [*sic*] there said he might have it.” Ms. Myers attempted to verify this diagnosis with the Claimant’s physician, and noted as an addendum to the PAS on June 25, 2012, that she received and reviewed information from the Claimant’s physician, including a list of diagnoses, and that “...arthritis was not listed...” The Claimant testified that he does have arthritis, and presented correspondence (Exhibit C-1) that included a August 1, 2012, letter from -----, MD, which states that the Claimant “...has evolving osteoarthritis of both hips, both knees, and left hand.”
- 10) Regarding the area of *continence of bowel*, Ms. Myers assessed the Claimant as “occasionally incontinent.” On the prior year’s PAS, Ms. Myers testified the Claimant was assessed one level higher, or “incontinent,” because that year he reported three episodes of incontinence per week – the Department’s standard for distinction between occasional incontinence and incontinence. Ms. Myers’s PAS notes regarding continence (included with *continence of bladder*) are as follows:

Continence: Bowel/Bladder: He has daily incontinence with bladder and states he wears adult briefs. He states he has occasional accidents with bowels typically at night and states it will occur once or twice a week.

The Claimant testified that he misunderstood this question at the time of the PAS. He testified that he thought he was being asked about the frequency of nightly accidents that resulted in “bed changing.” He testified that the frequency of total bowel incontinence episodes is between four and five per week.

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 16 points on his June 4, 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 six areas – *significant arthritis, bathing, dressing, continence of bowel, transferring, and orientation* – for additional PAS points. For *bathing* and *dressing*, the testimony of the Claimant corresponds with the assessment of “physical assistance” rather than “total care” and the Claimant was correctly assessed.
- 3) The Claimant denied problems with *orientation* in this hearing and at the time of the PAS assessment. He was correctly assessed in this area.
- 4) The Claimant reported in detail to the Department’s assessing nurse how he transfers using assistive devices throughout his home. The Claimant was correctly assessed as requiring supervision or the use of an assistive device, as opposed to the one-person assistance proposed.
- 5) The Claimant indicated that he may have a diagnosis of arthritis at the time of the PAS assessment, but the Department’s assessing nurse was unable to obtain verification of this diagnosis. The Claimant presented verification of this diagnosis from his physician. The Department should have awarded one point to the Claimant for *significant arthritis*.
- 6) Testimony and evidence show that the assessment of *continence of bowel* for the Claimant was based on miscommunication. In the previous year, the Claimant was assessed as “incontinent,” but on the current PAS assessment the Claimant was assessed as “occasionally incontinent.” The testimony of the Claimant that he misunderstood the assessing nurse’s question is convincing, as is his testimony regarding the actual frequency of his incontinence episodes. As this frequency is greater than the Department standard of three episodes per week, the Claimant should have been assessed as “incontinent” and awarded an additional point for this area.
- 7) With two additional points revealed through testimony and evidence for a total of 18 points, the Department should have awarded the Claimant a level of care “C.”

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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