



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

October 17, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 26, 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

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

IN RE: ----

Claimant,

v.

ACTION NO.: 12-BOR-1917

**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 26, 2012, on a timely appeal filed July 31, 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

----, Claimant's Representative

---- ----, Claimant's Witness

Kay Ikerd, 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 "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 July 9, 2012
- D-3 Medical diagnosis request letter from WVMi to ----, M.D., dated July 12, 2012, completed and returned to WVMi on July 16, 2012
- D-4 Notice of Decision dated July 18, 2012
- D-5 Pre-Admission Screening (PAS) Form dated July 12, 2011

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, 62 hours per month

Level B - 10 points to 17 points, 93 hours per month

Level C - 18 points to 25 points, 124 hours per month

Level D - 26 points to 44 points, 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 July 9, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's daughter, Claimant's son 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. Department's witness further testified that on July 12, 2012, she sent a letter to Claimant's primary care physician, ----, M.D., asking him to confirm a diagnosis of angina at rest. She stated that she received a reply from Dr. ---- signed on July 16, 2012, indicating he did not diagnose her with this medical condition. (Exhibit D-3). She added that because Claimant's physician did not confirm a diagnosis of angina at rest, no more Level-of-Care points were added to her July 9, 2012, PAS. WVMI reported its findings to Claimant in a Notice of Decision dated July 18, 2012. (Exhibit D-4.)
- 3) Claimant's Representative asserted that Claimant should have received five 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, (f) continence of bowels, (h) transferring, (i) walking and (j) wheeling.
- 4) **Bathing** – The July 2012 PAS (Exhibit D-2) rated Claimant at level 2, physical assistance, and assessed her with one point for this functional ability. The "Nurse's overall comments" section of the PAS states as follows: "[Daughter] assists with bath and she typically takes one bath a week and sponges the rest of the time. [Daughter] assists her in/out of tub/shower and they have a hand-held shower

sprayer and member states she pretty much washes most of her own body with exception of her back. She sponges off on her own at the bathroom sink and son reports there is a bar stool type chair that she sits on. Son will wash her back at those times as well.” Claimant’s Witness stated that the Claimant can get into the bathtub and does participate to some degree in bathing. However, he added, when Claimant is finished with her bathing, she is physically exhausted and cannot get out of the tub without assistance. Department’s Representative stated that the only way Claimant could be elevated to level 3 in bathing would be if she could not help with any part of her bathing and required total care.

- 5) ***Continence of Bowels*** – The July 2012 PAS (Exhibit D-2) rated Claimant at level 1, continent, and assessed her with no points for this functional ability. The “Nurse’s overall comments” section of the PAS states as follows: “[Claimant] denies having incontinence with bowels. She states she had an accident this morning with bowels as she was working a puzzle and kept putting off going and thought she could make it and had an accident. She states this rarely happens. Son reports may [sic] 2 accidents a year . . . Son and [daughter] report she used to have more frequent issues after bowel surgery but takes [prescription medication] daily and has help [sic] greatly. Son again when I asked states this is only the second accident he can remember in the past year.” Claimant’s Representative argued that Claimant received a Level-of-Care point for bowel incontinence on her previous PAS, and she should have received a point on the current PAS as well. Department’s Representative submitted into evidence the PAS from the previous year, conducted on July 12, 2011. (Exhibit D-5.) According to this PAS, Claimant was assessed at level 2, occasionally incontinent of bowel. The July 2011 PAS states as follows in the “Nurse’s overall comments” section: [Claimant] reports she has bowel accidents occasionally if she has diarrhea that she cannot control. She states it occurs about once per month.” Claimant’s witness testified that Claimant has had bowel incontinence accidents less frequently this year because she has been placed on a medication for this condition and the medication has been very effective in correcting the problem.
- 6) ***Transferring*** – According to the July 2012 PAS (Exhibit D-2), Claimant was rated at level 3, one-person assistance, and two points were assessed for this functional ability. Claimant’s Representative stated that it often requires the hands-on support of both herself and her brother, Claimant’s Witness, to help her mother transfer. Department’s Representative stated that two Level-of-Care points were the highest number of points which an individual could receive for this functional ability. She added that regardless of whether Claimant was assessed at level 3 or level 4, she could not receive more than two Level-of-Care points for transferring.
- 7) ***Walking*** – According to the July 2012 PAS (Exhibit D-2), Claimant was rated at level 2, supervised/assistive device, and one point was assessed for this functional ability. The “Nurse’s overall comments” section of the PAS states as follows: “[Claimant] walked independently part of the way during visit and then used her son’s hand to steady herself on the way back. She has a straight cane by the door

and I asked her about it and she denies that she uses it stating she doesn't feel like it is steady enough. She states she will use walls, door facings, banisters to help steady herself if she doesn't hold son's hand." Claimant's Representative stated that on the June 2011 PAS, Claimant was rated at level 3, one-person assistance, and she should have received the same assessment on the current PAS. The July 2011 PAS (Exhibit D-5) assessed Claimant at level 3, one person assistance for walking and stated the following on the "Nurse's overall comments" section: "[Claimant] walks in the home holding onto the door frames and stationary objects to steady herself. [Claimant] and son report she has to hold onto someone's arm going down the 15 steps to the downstairs and states she can pull herself up the stairs but has to rest at times before she gets to the top and states someone has to be behind her going up the steps to supervise." Department's Representative stated that she did not conduct the 2011 PAS, and by the description of Claimant's functional ability of walking, she should have been assessed at level 2, supervised/assistive device. She stated that one-person assistance means a person must hold up the Claimant and steady her as she walks. She added that if the Claimant holds onto something or even holds onto another person's hand for support, that does not constitute one-person assistance. Claimant's Witness testified that since the current PAS was conducted, Claimant's family had a chair lift installed to help her mother go up and down the stairs in her home.

- 8) **Wheeling** – According to the July 2012 PAS (Exhibit D-2), Claimant was rated at level 4, total assistance. However, no points were assessed for this functional ability. Department's Representative stated that according to policy, no points may be assessed for wheeling unless Claimant's functional ability of walking was assessed at least at level 3, one-person assistance.
- 9) Claimant's Representative stated that Claimant and her entire family is fortunate that her brother is able to remain in her mother's home and provide a high quality of care for the Claimant. She stated that because of this, her mother has improved greatly in several areas of her functional abilities. She added that she believes her mother is being punished because this effective care helps her mother's functioning to improve, then the WVMi nurse assesses her as requiring a lower Level of Care.

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 July 9, 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 five additional level-of-care points, on item #26, Functional Abilities, for bathing, continence of bowels, transferring, walking and wheeling.
- 3) The evidence does not support that an additional point should be assessed for bathing. Department's Witness recorded on the July 2012 PAS that Claimant could get into her bathtub and could participate to some degree in bathing. In order to receive an additional Level-of-Care point, Claimant would not be able to assist in any way in bathing.
- 4) The evidence does not support that an additional point should be assessed for continence of bowels. Department's Witness recorded on the July 2012 PAS that Claimant had very infrequent bowel accidents. Claimant's witness offered testimony that indicated Claimant's functioning had improved in this area.
- 5) The evidence does not support that an additional point should be assessed for transferring. Claimant received the maximum number of points for this functional ability.
- 6) The evidence does not support that an additional point should be assessed for walking. Department's Witness recorded on the July 2012 PAS that Claimant walked independently or by holding onto objects or her son's hand. In order to receive an additional point, the nurse would have to observe that Claimant required hands-on support when walking.
- 7) The evidence does not support that points should be assessed for wheeling. Claimant was not assessed as requiring one-person assistance for walking, so policy dictates that no points may be assessed for wheeling.
- 8) No additional point will be added to Claimant's July 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 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 17th day of October 2012.

Stephen M. Baisden
State Hearing Examiner