

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

IN RE: -----

Claimant,

v.

ACTION NO: 11-BOR-2175

**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 January 6, 2012 for -----. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened by telephone conference call on December 8, 2011, on a timely appeal filed October 11, 2011.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health & 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 homemaker and witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative

-----, 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. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department was correct in the decision to reduce Claimant's homemaker hours from a Level "C" to a Level "B."

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver 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/Disabled Home and Community Based Services Waiver Policy Manual
Chapter 501.5.1.1(a) and chapter 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) Form dated September 19, 2011
- D-3 Notice of Decision dated September 27, 2011

VII. FINDINGS OF FACT:

- 1) Department's representative entered into the record the applicable policy for this hearing. (Exhibit D-1.) Aged/Disabled Home and Community Based Waiver 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

Aged/Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.3 states in part:

Nurses shall not render medical diagnoses. In those cases where there is a medical diagnosis question, the decision shall be based on medical evidence presented by appropriate medical professionals.

- 2) Department's witness testified that she conducted a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant on September 19, 2011. (Exhibit D-2.) Claimant was awarded a total of 17 points on the PAS and was approved for Level B of care. WVMi reported its findings to Claimant in a Notice of Decision dated September 27, 2011. (Exhibit D-3.)
- 3) Claimant asserted that he should have received two more points on his PAS. He stated he should have received these additional points on item #26, Functional Abilities, (f) continence of bowels and (g) orientation.

Continence of bowels – According to the September 19 PAS (Exhibit D-2) one point was awarded for this functional ability. The section of the PAS labeled "Nurse's overall comments" states as follows: "He wears pull-ups . . . He states he has accidents with his

bowels about 1-2 times per week.” Claimant and Claimant’s witness agreed that he had one to two bowel accidents per week at the time the PAS was conducted, but both felt that the accidents have become more frequent since that time. Department’s representative argued that any physical or medical changes Claimant experienced since the September 19, 2011 PAS was beyond the scope of this hearing.

Orientation – The September 19 PAS (Exhibit D-2) rated Claimant at level 1, oriented, and gave him no points for this functional ability. The section of the PAS labeled “Nurse’s overall comments” states as follows: “Member states his full name . . . He stated his address, [date of birth], phone number, [social security number] and the time. He states the President as Obama. Discussed orientation, member knew the meaning of it. He is assessed as being oriented to person, place and time.” Claimant and his witness testified that his short-term memory is poor and deteriorating. Department’s representative stated that short-term memory is not a component of the functional ability of orientation.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual’s Level of Care for the Aged/Disabled Waiver Program is determined by the number of points obtained on the PAS assessment tool. The Claimant was awarded 17 points as the result of a PAS completed by WVMI in September 2011. This places Claimant at a level of care of “B.” In order to receive a level of care of “C,” Claimant needs at least 18 points on the PAS.
- 2) Claimant and his witness argued that Claimant should have been awarded additional points for continence of bowel and orientation.
- 3) No additional points will be awarded for continence of bowel. Claimant stated during the hearing that at the time of the September 19 PAS, he was having one to two bowel accidents per week. This information was recorded correctly on the PAS, for which he received one level-of-care point.
- 4) No points will be awarded for orientation. Claimant argued that he should have received a level-of-care point because his short-term memory is poor and deteriorating; however, short-term memory is not a component of this functional ability.
- 5) Since no additional points will be added to Claimant’s PAS evaluation score, it will remain at 17 points. He meets the medical criteria required to receive a Level B of care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision 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 6th day of January 2012.

**Stephen M. Baisden
State Hearing Officer**