



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

December 4, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 15, 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 "D" care.

It is the decision of the State Hearing Examiner to **reverse** 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
-----, -----, -----

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-2188

**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 November 15, 2012, on a timely appeal filed September 7, 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

----, Site Supervisor, ----, ----, Claimant's Representative

----, Case Manager, ----, ----, Claimant's Witness

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

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

Teresa McCallister, 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 August 16, 2012
- D-3 Notice of Decision dated August 27, 2012
- D-4 Pre-Admission Screening (PAS) Form dated August 24, 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

Aged and Disabled Home and Community Based Waiver Services Policy Manual Chapter 501.5.1.3(f) states:

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, 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 August 16, 2012. (Exhibit D-2.) She testified that Claimant, Claimant's mother, Claimant's homemaker and she were present for the PAS. Claimant was assessed with a total of 25 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 August 27, 2012. (Exhibit D-3.)
- 3) Claimant's Representative asserted that Claimant should have received one more Level-of-Care point on her August 2012 PAS. She stated Claimant should have received this additional point on item #26, Functional Abilities, for (j) wheeling.
- 4) According to the August 2012 PAS (Exhibit D-2), the assessing nurse rated Claimant at level 2, "wheels independently," for the functional ability of wheeling. No Level-of-Care points are awarded for an individual assessed at level 2 in wheeling. The "Nurse's overall comments" section of the PAS states as follows: "[Claimant] reports independent wheeling in power chair; Mother reports new chair is more difficult to control, and she bumps into doorways at times."

Claimant's Representative stated that on Claimant's previous PAS, conducted on August 24, 2011 (Exhibit D-4), she was rated at level 3, "situational assistance," and awarded one point for wheeling. Claimant's Representative argued that Claimant should have received the same assessment on the current PAS. The August 2011 PAS stated the following on the "Nurse's overall comments" section: "[Claimant] and Mother report [Claimant] maneuvers power chair using [right] hand once brace is in place; reporting no control of hands. Mother reports assisting with maneuvering in tight places, and must operate on/off switch."

- 5) Department's Witness, the WVMi nurse who conducted both the August 2011 and the August 2012 assessments, testified that a WVMi nurse does not have access to any previous PAS information when he or she conducts an assessment. She testified that she did not believe there was a change in Claimant's condition from August 2011 to August 2012, but she did not receive information from Claimant or the other persons present during the 2012 PAS to indicate Claimant needed assistance with maneuvering her wheelchair, or that someone had to place a hand brace on Claimant's hand in order for her to control the chair. She stated that knowing this information now, and considering her professional opinion that Claimant had not improved in her functional abilities from August 2011 to August 2012, she could say that helping Claimant with the hand brace constituted situational assistance.

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 25 points as the result of a PAS completed by WVMi on August 16, 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 one additional Level-of-Care point, on item #26, Functional Abilities, for wheeling.
- 3) Department's Witness testified that in her professional opinion, Claimant had not improved in her functional abilities from the August 2011 to the August 2012 PAS. The witness was not given information during the August 2012 PAS concerning a hand brace that was required for Claimant to be able to control her wheelchair, but she testified that had she received it, she could have assessed Claimant with a Level-of-Care point for wheeling. Therefore, one additional Level-of-Care point will be added to Claimant's August 2012 PAS for wheeling.
- 4) One additional point will be added to Claimant's August 2012 PAS evaluation score. Claimant meets the medical criteria required to receive a Level "D" care.

IX. DECISION:

It is the decision of the State Hearing Examiner to **reverse** 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 4th day of December, 2012.

Stephen M. Baisden
State Hearing Examiner