



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

January 17, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 4, 2012. Your hearing request was based on the Department of Health and Human Resources' reduction of homemaker hours under the Aged and Disabled Waiver Program, based on a level of care determination.

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 should have awarded you two (2) additional points on the September 21, 2011 PAS, for a total of 26 points. This would have resulted in a higher level of care – level 'D' – and higher corresponding service hours.

It is the decision of the State Hearing Officer to **reverse** the Department's determination of homemaker hours under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Melissa Bell, WVMH

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2268

**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 17, 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 on January 4, 2012 on a timely appeal, filed October 17, 2011.

All persons offering testimony were placed under oath.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver (hereinafter "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 witness

Kay Ikerd, Department representative

Melissa Bell, 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 homemaker hours under the Aged and Disabled Waiver Program.

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 September 21, 2011
- D-3 Notice of Decision, dated October 3, 2011
- D-4 Pre-Admission Screening for Aged/Disabled Waiver Services, dated September 13, 2010

VII. FINDINGS OF FACT:

- 1) Claimant is a 33-year old male recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on September 21, 2011 (Exhibit D-2). The reevaluation completed in the prior year (Exhibit D-4), completed on September 13, 2010, was additionally submitted by the Department.
- 2) The Department issued a Notice of Decision to the Claimant on or about October 3, 2011 (Exhibit D-3). This notice states, in pertinent part:

You have been determined medically eligible to continue to receive Waiver services.

The number of homemaker service hours approved is based on your medical needs, and cannot exceed 124 hours per month.

- 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
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- 4) On the September 21, 2011, Pre-Admission Screening, or PAS (Exhibit D-2), Melissa Bell – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – assessed 24 points for the Claimant. Five points were awarded for medical conditions and symptoms, one for decubitus, one for vacating, sixteen for functional abilities in the home, and one for medication administration. This point level corresponds to the level of care “C,” and the service limit of 124 hours monthly noted on the decision (Exhibit D-3) issued to the Claimant.
- 5) The Claimant disputed the following areas: the medical conditions or symptoms of *contractures* and *mental disorder*, and the functional areas of *grooming*, *transferring*, and *hearing*.
- 6) The proposed area of *transferring* had been assessed at a level awarding the highest possible points allowable by policy.
- 7) Regarding the area of *hearing*, the Claimant testified that he suffers from hearing loss and should have been assessed as ‘impaired/not correctable’ instead of ‘impaired/correctable.’ Ms. Ikerd testified that the Claimant was assessed as ‘impaired/not correctable’ on the 2010 PAS (Exhibit D-4), but that this was in error. Ms. Bell testified that the assessment of the Claimant in this area is a functional assessment, not a medical assessment, and noted that the Claimant did not require information to be repeated during the PAS. The comments from Ms. Bell on the 2011 PAS (Exhibit D-2) regarding this area state, in pertinent part:

HEARING: Member states he has 35% hearing loss in right ear since childhood. RN spoke in normal voice and member required no repeats.
- 8) The Claimant testified, with regard to the area of *grooming* that there may be parts he can assist with in a “very minimal fashion.” Ms. Bell testified that to assess the Claimant as requiring total care in this area, he must not be able to assist in any way.
- 9) The Claimant contended that he should have been assessed with the medical condition or symptom of *contractures*. -----, the Claimant’s Case Manager, testified that she is a Registered Nurse and that her visual assessment of the Claimant is that he has contractures. Ms. Bell testified that she did not assess the Claimant as having contractures, and if this area had been disputed on the day of the PAS she would have pursued additional information.

- 10) The Claimant was awarded a point for *contractures* from the 2010 PAS. The comments in this area from the 2010 PAS (Exhibit D-4) state, in pertinent part:

Contractures: dx of quadriplegia rx flexeril [*sic*]

- 11) The 2011 PAS (Exhibit D-2) lists the Claimant's medications at the time of the PAS. Flexeril is listed, with details on dosage, route, and frequency, but without details on the reason or diagnosis requiring the medication. Flexeril was also listed as one of the Claimant's medications on the 2010 PAS (Exhibit D-4). Ms. Bell testified that the Claimant does not have a diagnosis or prescription for *contractures*.
- 12) The Claimant contended that he should have been awarded a point for the *mental disorder* of anxiety. He testified that his medication – Valium – has a dual purpose: to treat both his muscle spasms and his anxiety. Ms. Bell testified that the Claimant has no anxiety diagnosis, and that she understood the medication to be only for his muscle spasms. Valium is noted on both the 2010 PAS and the 2011 PAS, and the Claimant was awarded a point for a mental disorder in 2010.

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 24 points on his September 21, 2011, PAS, and was awarded a level of care 'C.' To be awarded a level of care 'D,' a minimum of 26 points is required. The Claimant proposed one area – *transferring* – that was assessed at the level awarding the highest possible points allowable to the Claimant by policy. No further consideration of this area was given.
- 2) Testimony regarding *grooming* confirmed the Department's assessment that the Claimant requires 'physical assistance' but not 'total care' in this area; the Claimant confirmed that he can assist, and assistance in even to a minimal extent would preclude an assessment of 'total care.' The Department's assessment in this area is correct.
- 3) The Claimant was assessed in the area of *hearing* as 'impaired/correctable.' Although it was noted the Claimant suffers from a degree of hearing loss, comments from the current PAS explicitly documented that he did not require anything said to be repeated. The Department testimony that the 2010 assessment in this area was in error resulted in less weight given to the 2010 PAS findings. The Department assessed *hearing* correctly.

- 4) Expert testimony from two witnesses regarding *contractures* is contradictory. The Department's reviewing nurse contends that the Claimant does not have contractures, but would have pursued additional documentation if the Claimant had voiced a dispute during the assessment. The Claimant was awarded a point for contractures on the 2010 PAS, with a prescription medication cited to support the finding for Flexeril, a medication the Claimant continued to take at the time of the current PAS. The Department did not contend that this previous PAS finding was in error – as they did with *hearing* – so consideration of the 2010 PAS findings were not given reduced weight for this area. The evidence available to the reviewing nurse should have at least warranted the pursuit of further documentation in this area. The Department should have awarded a point to the Claimant for the medical condition or symptom of *contractures*.
- 5) The Claimant testified that he takes Valium, a medication listed on both his 2010 and 2011 PAS documents, for both muscle spasms and *anxiety*. He was awarded a point for the mental disorder of anxiety on the 2010 PAS, and the Department made no indication that the previous finding in this area was in error; therefore, the weight given to the 2010 PAS in this area was not discounted. The evidence available to the reviewing nurse in this area warranted the pursuit of additional documentation. The Department should have awarded a point to the Claimant for a medical condition or symptom of mental disorder, specifically *anxiety*.
- 6) With two additional points revealed through evidence and testimony, the Department should have awarded a level of care 'D' to the Claimant, with the higher corresponding service hours.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's determination of level of care and homemaker hours 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 January, 2012.

**Todd Thornton
State Hearing Officer**