



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

January 20, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 19, 2012. Your hearing request was based on the Department of Health and Human Resources' action to reduce your homemaker service hours in the Aged/Disabled Waiver Program based on the results of 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.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state that for the Aged/Disabled Waiver Program, individuals are evaluated by utilizing the Pre-Admission Screening (PAS) tool to assess their functional abilities in the home. Points are assigned by the nurse based on the information derived from the PAS assessment interview, and the level of care is divided into four categories of assistance. The individual's level of care is determined based on the points assessed during the completion of the PAS assessment. (Aged and Disabled Waiver Manual Section 501)

The information provided during your hearing reveals that you meet the medical requirements for Level of Care (C) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce your level of care under the Aged/Disabled Waiver Program from Level (C) to Level (B).

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI / Public Partnership, LLC

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2474

**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 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 19, 2012.

II. PROGRAM PURPOSE:

The 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's witness

Kay Ikerd, Department's representative

-----, Department's witness

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to reduce the Claimant's Level of Care benefits under the Aged/Disabled Home and Community-Based Waiver Program from level (C) to level (B).

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Pertinent provisions of Aged/Disabled Waiver Policy Manual
- D-2 Pre-Admission Screening (PAS) assessment completed October 26, 2011
- D-3 Notice of Decision dated November 1, 2011
- D-4 Pre-Admission Screening (PAS) assessment completed November 5, 2010

Claimant's Exhibits:

- C-1 Letter dated January 18, 2012 from Nohl A. Braun, MD

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing a required annual re-evaluation for the Title XIX Aged/Disabled Waiver Program during the month of October 2011. The Department's representative, Kay Ikerd, Registered Nurse (RN) with the Bureau of Senior Services, stated that the Department will now provide the prior year's PAS assessment during the hearing for comparison and to show why this year's PAS assessment was rated differently.
- 2) A West Virginia Medical Institute (WVMI) RN, -----, visited the Claimant in his home and completed his Pre-Admission Screening (PAS) medical assessment (D-2) on October 26, 2011. She determined that the Claimant continues to meet the medical requirements for the program; however, she assessed the Claimant at a reduced level from the previous determination - Level of Care (B) rather than Level (C). The Claimant received sixteen (16) points during the PAS assessment, which places him in Level (B) care. For Level of Care (C), the Claimant would need at least eighteen (18) points.

- 3) The Department conceded during the hearing that the Claimant also met the criteria to be assessed one (1) point for high blood pressure because he was prescribed medication for the condition. This brings the Claimant's total assessed points to seventeen (17).
- 4) During the hearing, the WVMi nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. Ms. Ikerd also discussed the prior year's PAS and noted when this year's findings were different.
- 5) The Claimant's physician noted during the 2011 PAS assessment process that the Claimant's condition has changed since the 2010 PAS was completed, indicating the Claimant's condition has changed from "deteriorating" to "terminal."
- 6) The Claimant stated that he planned to contest the Department's ratings in the areas of bowel incontinence, transferring, wheeling, communication, and walking.
- 7) In the area of bowel incontinence, the Claimant was rated during the 2011 PAS assessment (D-2) as having no bowel incontinence and received no points. The nurse explained that during the assessment interview the Claimant told her that he did not have bowel incontinence and she documented this on the PAS. The Claimant testified that he gets confused and cannot remember telling the nurse that he was continent of bowels. He added that he has a medical history of being shot in the head which has caused him to have confusion, memory problems, and speech difficulties. The Claimant's homemaker, -----, stated that she often cleans up after the Claimant has bowel incontinence incidents. The Claimant estimated that the incontinence occurs approximately 5 times per week. He added that sometimes this occurs because his walk is slow and he cannot get to the bathroom in time. The 2010 PAS (D-4) assessment indicated that the Claimant had occasional incontinence at that time because he reported having occasional accidents.

In the area of transferring, the Claimant was rated during the 2011 PAS (D-2) assessment as being able to perform this function with supervision and/or with assistive devices, and he received one (1) point. Two (2) points are awarded if the evidence shows the Claimant requires at least one-person assistance for this function. The nurse explained that during the assessment interview, she found that the Claimant was able to transfer by holding onto the furniture. The Claimant's homemaker stated that sometimes he is not able to transfer without physical assistance due to his legs being weak and not stable. The Claimant was assessed during the 2010 PAS assessment as requiring one-person assistance because the homemaker had to physically assist him with standing from a seated position during that assessment. This is consistent with the homemaker's testimony during the hearing.

In the area of wheeling, the Claimant was rated during the 2011 PAS (D-2) assessment as not utilizing a wheelchair in his home and he did not receive a point. The nurse explained that the Claimant indicated he used the wheelchair only outside of his home. The Claimant was assessed during the 2010 PAS assessment as utilizing a wheelchair in the home at times and that he needed situational assistance with the chair due to

weakness and pain. The Claimant testified that he does not use the wheelchair in the apartment because the room is too small.

In the area of communication, the Claimant was rated during the 2011 PAS (D-2) assessment as having no impairment and received no points. The nurse explained that the Claimant communicated with her during the assessment and that she understood his answers. The Claimant stated that he sometimes has difficulty speaking his thoughts; however, he communicated effectively during the hearing. During the 2010 PAS assessment (D-4) he was also assessed as having no impairment with communication.

In the area of walking, the Claimant was rated during the 2011 PAS (D-2) assessment as utilizing an assistive device and received one (1) point. Two (2) points are awarded if the evidence shows the Claimant requires at least one-person physical assistance for this function. The nurse explained that the Claimant walked with the use of his cane during the assessment. The Claimant stated that he has difficulty walking at times and uses his cane often. The Claimant's homemaker stated that on days when the Claimant has "hurting spells," he is not able to get up by himself and she must physically assist him. She described instances where he needed to get up, but could not and would stay in the chair until she came to assist him. The Claimant was assessed during the 2010 PAS assessment (D-4) as needing physical assistance and he received two (2) points because the homemaker had to physically hold onto him because of "staggering".

- 8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1(a) (D-1) Service Level Criteria, states in pertinent part:

There are four Service Levels for Personal Assistance/Homemaker services. Points will be determined as follows based on the following sections of the PAS:

#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 equal to or greater than Level 3 before points 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

- 9) Aged/Disabled Home and Community Based Services Waiver Policy Manual 501.5.1.1(b) (D-1) Service Level Limits states:

Level	Points Required	Range of Hours per Month
A	5-9	0-62
B	10-17	63-93
C	18-25	94-124
D	26-44	125-155

The total number of hours may be used flexibly within the month, but must be justified and documented on the Plan of Care. Example: If the Plan of Care shows two hours/day, Monday-Thursday and 5 hours on Friday, and three hours on Saturday, the additional hour on Saturday must be justified on the Plan of Care.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that there are four levels of care for homemaker services. Points are determined based on the individual’s medical condition and functional abilities at the time the PAS is completed. Points are assigned accordingly.
- 2) The Claimant was assessed at Level of Care (B) during his October 26, 2011 assessment having received sixteen (16) points. The Department conceded to adding one (1) additional point for high blood pressure under the category of, “other” under the section, “Medical Conditions/Symptoms.” This brings the Claimant’s total points to seventeen (17). To be assessed at Level of Care (C), the Claimant must be assigned at least eighteen (18) points.
- 3) Policy stipulates that during the assessment process, the Department is to complete the PAS assessment by means of both observation and/or an interview process to determine the individual’s functional ability in the home.
- 4) The Claimant disputed the Department’s findings in the area of bowel incontinence, and contended that he should be assessed a point in this area. He was assessed no points because the nurse documented that he told her he did not have this condition. One (1) point is awarded if the evidence shows the Claimant has occasional bowel incontinence, and two (2) points are awarded if the evidence shows the Claimant has total bowel incontinence. The totality of the evidence does not support an award of points in this area because the Claimant clearly

indicated he did not have the condition. This is a change from his reported occasional incontinence during the 2010 PAS assessment.

- 5) The Claimant disputed the Department's findings in the area of transferring, and contended that he should be rated as needing physical assistance for this function. He was rated as being able to transfer with supervision or use of assistive devices and received one (1) point. Two (2) points are assessed if the evidence shows the Claimant requires physical assistance to transfer. The totality of the evidence supports that the Claimant requires physical assistance at times to transfer. Although the nurse observed him transfer by pushing off furniture during the assessment, it is clear that at times the Claimant requires physical assistance. His homemaker testified that at times he must have physical assistance to get out of a seated position due to weakness and pain, and that without this assistance, he will stay in a seated position. The homemaker's testimony is found to be credible, and is consistent with the findings during the 2010 PAS assessment. Furthermore, the Claimant's physician indicated that the Claimant's condition has deteriorated since 2010 and is now terminal. The Claimant is awarded one (1) additional point for a total of two (2) points in this area.
- 6) The Claimant disputed the Department's findings in the area of wheeling. He was not assessed points in this area because he reported that he does not use the wheelchair in his home. The Claimant's testimony during the hearing also supports that he does not use a wheelchair in his home. No points are awarded in this area.
- 7) The Claimant disputed the Department's findings in the area of communication. He was not assessed points in this area because the nurse indicated that he communicated with her and that she understood his answers. The totality of the evidence does not support an award of points in this area. The Claimant was able to communicate during the hearing, and although he does have difficulty and struggles to communicate at times with getting his words out, he is effectively communicating.
- 8) The Claimant disputed the Department's findings in the area of walking. He was assessed as utilizing assistive devices to walk and received one (1) point in this area. Two (2) points are awarded if the evidence supports that the Claimant requires physical assistance of one person to walk. The totality of the evidence supports that the Claimant at times needs physical assistance to walk. The homemaker's testimony in this regard is found to be credible and supported by the evidence. She testified that she must physically assist the Claimant with walking at times due to weakness and pain. The Claimant was rated as requiring this level of assistance during his 2010 PAS assessment, and his physician clearly indicated that his condition has deteriorated since 2010 and that his condition is now terminal. One (1) additional point is awarded for a total of two (2) points in this area.
- 9) A total of two (2) additional points are awarded in the areas of walking and transferring, which brings the Claimant's total awarded points to nineteen (19) and raises his level of care to Level of Care (C).
- 10) Based on these findings, the Department was not correct in its decision to reduce the Claimant's Level of Care from Level (C) to Level (B).

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to reduce the Claimant's Level of Care 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 20th Day of January, 2012.

**Cheryl Henson
State Hearing Officer**