



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

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

February 29, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 28, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your level of care hours from Level "C" to Level "B."

In arriving at a decision, the State Hearings 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 and Disabled Waiver program is based on current policy and regulations. These regulations provide that number of homemaker service hours is determined based on the Level of Care (LOC). The Level of Care 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 WVMI (Aged and Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.5).

The information submitted at this hearing revealed that you meet the medical criteria required for Level "C" care.

It is the decision of the State Hearings Officer to **Reverse** 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 Hearings Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services
-----, Coordinating Council for Independent Living, [REDACTED] WV
-----, Pro Careers, [REDACTED] WV

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

IN RE: -----

Claimant,

v.

ACTION NO.: 12-BOR-473

**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 February 29, 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 February 28, 2012, on a timely appeal filed December 5, 2011.

II. PROGRAM PURPOSE:

The Program entitled Aged and 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
-----, Pro Careers, Claimant's Homemaker and Co-Representative
-----, RN, Pro Careers, Claimant's Homemaker-RN and Co-Representative
-----, National Federation of the Blind of WV, Claimant's 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 and 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 and 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 December 8, 2010
- D-3 Pre-Admission Screening (PAS) Form dated November 15, 2011
- D-4 Notice of Decision dated November 21, 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 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 and 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 November 15, 2011. (Exhibit D-3.) 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 November 21, 2011. (Exhibit D-4.)
- 3) Department's witness testified that Claimant should have received one more point on her PAS. She testified that Claimant should have received this additional point on item #23, Medical Conditions/Symptoms, (h) pain. She stated that although she did not have a physician's diagnosis for this medical condition, she noted Claimant had medications specifically for pain. Department's witness added that she could not determine if a technical problem had occurred with her computer or if she made a typographical error, but the Level-of-Care point that she intended to award for the medical condition of pain did not appear on the final print-out of the PAS. (Exhibit D-3.) Department's representative did not dispute that an additional Level-of-Care point should have been assessed for #23, (h) pain.

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 obtained on the PAS assessment tool. The Claimant was awarded 17 points as the result of a PAS completed by WVMi in November 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) Department's witness testified that Claimant should have been awarded an additional point for the medical diagnoses of pain. Department's representative did not object to the awarding of this additional point.
- 3) Since one additional point will be added to Claimant's PAS evaluation score, it will increase to 18 points. She meets the medical criteria required to receive a Level C of care.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 29th day of February 2012.

**Stephen M. Baisden
State Hearing Officer**