



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

April 27, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 5, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your level of care hours from Level "D" to Level "C."

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 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 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 "C" care.

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

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services
-----, [REDACTED] WV
-----, [REDACTED] WV

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

IN RE: ----

Claimant,

v.

ACTION NO.: 12-BOR-620

**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 April 27, 2012 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 April 5, 2012, on a timely appeal filed January 25, 2012.

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's Caregiver and Representative

----, Claimant's Caregiver and Witness

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

Brenda Myers, 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 decision 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 January 11, 2012
- D-3 Notice of Decision dated January 17, 2012
- D-4 Letter from WVMi to -----, M.D., dated January 13, 2012, and returned from Dr.----- to WVMi on January 18, 2012
- D-5 Pre-Admission Screening (PAS) Form dated October 26, 2010

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; 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 Services 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 January 11, 2012. (Exhibit D-2.) Claimant was awarded a total of 22 points on the PAS and was approved for Level C of care. WVMi reported its findings to Claimant in a Notice of Decision dated January 17, 2012. (Exhibit D-3.)
- 3) Department's witness, the WVMi nurse who conducted the PAS, testified that she received additional information from Claimant's physician, ----, M.D., indicating Claimant had a diagnosis of significant arthritis. Department's witness added that she could not explain why this diagnosis was not included on Claimant's PAS, but that he should be assessed with an additional point at item #23, Medical Conditions/Symptoms, for (d) significant arthritis. This increases his total level-of-care points to 23.

- 4) Claimant's representative asserted that Claimant should have received four more points on his PAS. He stated he should have received these additional points on item #26, Functional Abilities, for (b) bathing, (d) grooming, (f) continence of bowels and (h) transferring.
- 5) **Bathing** – The January 2012 PAS (Exhibit D-2) rated Claimant at level 2, physical assistance, and gave him one point for this functional ability. The section of the PAS labeled "Nurse's overall comments" states as follows: "[Claimant] reports homemaker assists him to step over into tub and out and he has a shower chair bench. [Claimant] reports that he washes his face, chest, underarms, arms, and then homemaker washes the rest of his body." Claimant's representative argued that the assessing nurse arrived on "a very good day" when Claimant was doing well, and he over-estimated his abilities to take care of himself. Department's witness testified that in order to rate Claimant at level 3 for this functional ability, she would have to determine that Claimant was not able to participate in any way in his bathing, and she noted on the PAS that Claimant did wash parts of his body himself.
- 6) **Grooming** – The January 2012 PAS (Exhibit D-2) rated Claimant at level 2, physical assistance, and gave him one point for this functional ability. The "Nurse's overall comments" section states as follows: "[Claimant] washes his hair while in the shower and states he does it himself. Homemaker shaves him due to tremors, and applies lotion to lower legs and feet. [Claimant] states he is right-handed and can cut fingernails on left hand but can't use left to cut right hand so he normally just has homemaker or partner to cut them for him. He goes to foot MD for toenails. He has his own teeth and a partial and uses a battery-operated toothbrush to brush his teeth." Claimant's representative argued that Claimant was functioning very well that day, and as such he tended to overestimate his own ability to attend to his grooming needs. Department's witness testified that in order to rate Claimant at level 3 for this functional ability, she would have to determine that Claimant was not able to participate in any way in his grooming, and she noted on the PAS that Claimant washed his hair himself and could trim the fingernails on his left hand.
- 7) **Continence of bowel** – According to the January 2012 PAS (Exhibit D-2), Claimant was rated at level 2 and one point was awarded for this functional ability. The "Nurse's overall comments" section states as follows: "[Claimant] reports occasional incontinence with bowels and states he may have an accident with bowels once a month." Claimant's representative stated that Claimant is in renal failure which results in a build-up of ammonia in his blood. He stated that the medication he takes to lower the ammonia level, lactulose, causes bowel incontinence. Department's witness testified that she did not note this medication in use during the January 2012 PAS, either in regular dosage or on an as-needed basis. She added that in order to rate Claimant at level 3 and award two points, she would have to document at least three bowel accidents per week.

- 8) ***Transferring*** – The January 2012 PAS (Exhibit D-2) rated Claimant at level 2, supervised/assistive device, and gave him one point for this functional ability. The “Nurse’s overall comments” section states as follows: “[Claimant] has [an adjustable bed] that the head and feet can be moved. He holds onto walker as he transfers out of bed. He uses lift chair and walker to transfer out of his chair. He has an elevated commode pedestal that assists with transfers off commode.” Claimant’s representative argued that the assessing nurse came to Claimant’s home on “a very good day.” He stated that Claimant’s blood pressure is very low, and had averaged 85/50 for the month that the PAS was conducted. He added that Claimant’s low blood pressure made him unsteady. Department’s witness testified that she observed Claimant get up using his lift chair, and he appeared to be steady on his feet. She stated that she did not observe anyone assisting him to do this.

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 assessed with 22 points as the result of a PAS completed by WVMi in January 2012. This places Claimant at a level of care of “C.” In order to receive a level of care of “D,” Claimant needs at least 26 points on the PAS.
- 2) One additional point will be assessed at item #23, Medical Conditions/Symptoms, for (d) significant arthritis. Department’s witness stated this point should have been included in the PAS, and Department’s representative had no objection to the awarding of a level-of-care point for this medical condition.
- 3) No additional points will be assessed for bathing. Department’s witness testified and recorded on the January 2012 PAS that Claimant participated in his bathing, and she would have had to determine that he required total care in bathing in order to assess a second point for this functional ability.
- 4) No additional points will be assessed for grooming. Department’s witness testified and recorded on the January 2012 PAS that Claimant participated in his grooming, and she would have had to determine that he required total care in grooming in order to assess a second point for this functional ability.
- 5) No additional points will be assessed for continence of bowel. Department’s witness testified and recorded on the January 2012 PAS that Claimant was having one bowel accident per month. She would have to document at least three accidents per week in order to assess him with an additional point.
- 6) No additional points will be assessed for transferring. Department’s witness testified and recorded on the January 2012 PAS that she observed Claimant get out of his chair with the assistance of a lift to stand steadily.

- 7) One additional level-of-care point should be added to Claimant's PAS evaluation score, raising it from 22 to 23 points. He meets the medical criteria required to receive a Level C 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 "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 27th day of April 2012.

Stephen M. Baisden
State Hearing Officer