



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

May 25, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 12, 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 'C,' a minimum of 18 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 was correct in its determination of your level of care.

It is the decision of the State Hearing Officer to **uphold** 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
Debra Lemasters, WVMI
Public Partnerships, LLC, Case Management Agency

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-669

**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 May 24, 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 April 12, 2012 on a timely appeal, filed February 8, 2012.

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
Kay Ikerd, Department representative
Debra Lemasters, 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 January 25, 2012
- D-3 Notice of Decision, dated February 6, 2012
- D-4 Pre-Admission Screening for Aged/Disabled Waiver Services, dated December 28, 2010

VII. FINDINGS OF FACT:

- 1) The Claimant is a 67-year old female recipient of Aged and Disabled Waiver (ADW) services for whom a reevaluation of medical eligibility was completed on January 25, 2012 (Exhibit D-2). The reevaluation for the prior year (Exhibit D-4), completed on December 28, 2010, was additionally submitted by the Department.
- 2) On or about February 6, 2012, the Claimant was mailed a notice of decision (Exhibit D-3) stating that she continued to be medically eligible for the ADW program, but at a reduced level of monthly budgeted homemaker services. These services were reduced to a level "B" (Monthly Personal Options Service Limits \$1,379.62).
- 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

- 4) On the January 25, 2012, Pre-Admission Screening form (“PAS”) (Exhibit D-2) completed by Debra Lemasters – a Registered Nurse employed by West Virginia Medical Institute (“WVMI”) – she assessed 15 points for the Claimant. Six points were awarded for medical conditions and symptoms, one for vacating, seven for functional abilities in the home, and one for prognosis. As a result of this point level, the Claimant was assessed at a level “B” and the notice of decision (Exhibit D-3) was issued to the Claimant.

- 5) The Claimant disputed the following areas: *angina*, *continence of bladder*, *walking*, *vacating the building in the event of an emergency*, *bathing*, *dressing*, *grooming*, *eating*, and *dysphagia*. The Claimant additionally testified in regards to her infusions and her use of a Continuous Positive Airway Pressure (CPAP) device. Department testimony confirmed that infusions are neither counted as *medication administration* nor as a professional and technical care need, and that the CPAP device is not the same as the professional and technical care need of *continuous oxygen*.
- 6) The Claimant's testimony in the areas of *bathing*, *grooming*, and *dressing* is that she requires assistance. Ms. Lemasters testified that she assessed the Claimant in these areas as requiring physical assistance.
- 7) The Claimant testified, regarding the functional area of *eating*, that she can eat on her own but has meals prepared for her. The Department assessed the Claimant as being able to eat on her own.
- 8) The Claimant testified, regarding the functional area of *continence of bladder*, that she has accidents every day, and that this has not stopped. The Department assessed the Claimant as incontinent of bladder. The Claimant denied incontinence of bowel.
- 9) The Claimant testified that she recently obtained diagnoses of *angina* and *dysphagia* from her physician, but that she was not diagnosed with either condition at the time of her assessment in January 2012.
- 10) Regarding *walking*, the Claimant testified that she falls regularly. She testified that she uses a walker, but still falls. Ms. Lemaster made the following comments on her PAS assessment form (Exhibit D-2), in pertinent part:

Walking:

STATED HAS STRAIGHT CANE AND WALKER AND STATED MAINLY USE OF CANE IN THE HOME. AT VISIT WALKED ACROSS KITCHEN AREA AND USED FURNITURE FOR SUPPORT ON A COUPLE OF OCCASION, NO LOSS OF BALANCE WAS NOTED. ON ARRIVAL SHE WAS IN THE BASEMENT IN BATHROOM AND WHEN SHE CAME BACK UP THE STEPS SHE "CRAWLED" UP THE STEPS. FELL THIS WEEK IN THE HOME STATED RIGHT KNEE "GAVE OUT" AND SHE FELL. STATED SHE HAS BEEN LOSING HER BALANCE STATED HAS HAD INCREASE OF FALLS DUE TO THIS, NOT NOTED DURING AMBULATION AT VISIT

- 11) Although the same testimony would be considered for the area of *vacating the building in the event of an emergency*, it should be noted that the Claimant was assessed as “physically unable” in this area and awarded a point.

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 15 points on her January 25, 2012, PAS, and was awarded a level of care ‘B.’ To be awarded a level of care ‘C,’ a minimum of 18 points is required.
- 2) The Claimant proposed six areas – *bathing, grooming, dressing, eating, vacating the building in the event of an emergency*, and *continence of bladder* – in which the assessment by the Department matched the testimony of the Claimant. The Department correctly assessed these undisputed areas.
- 3) The Claimant proposed two conditions – *angina* and *dysphagia* – currently diagnosed by a physician but not diagnosed at the time of the assessment. The Department correctly assessed these conditions.
- 4) Testimony from the Claimant indicated that she falls even with the use of an assistive device. PAS notes from the assessing nurse indicate that the Claimant informed her of these falls. The Claimant should have been assessed as requiring one-person assistance in the functional area of *walking*. This assessment would correspond to a “Level 3” and two points in the area of *walking* instead of the assessed “Level 2” with one point.
- 5) Testimony and evidence revealed that the Department should have awarded the Claimant one additional point, for a total of 16 points; however, this point total still corresponds with the level “B” level of care. The Department’s determination of level of care for the Claimant is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** 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 May, 2012.

**Todd Thornton
State Hearing Officer**