



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 17, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 21, 2009. Your hearing request was based on the Department of Health and Human Resources' determination of homemaker hours under the Aged and Disabled Waiver Program.

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 Form and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units and hours, which is reviewed and approved by the West Virginia Medical Institute. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2)

The information that was submitted at your hearing revealed that, although additional points should have been awarded on your most recent PAS, the Department was correct in its determination of your Level of Care and corresponding homemaker hours.

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
Kim Sang, WVMI
[REDACTED] Action Group, CMA

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

-----,

Claimant,

v.

Action Number: 09-BOR-766

**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 July 17, 2009 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 21, 2009 on a timely appeal, filed February 18, 2009.

It should be noted that benefits have been continued by the Department.

All persons offering testimony were placed under oath.

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
-----, RN, Mason County Action Group
-----, RN, Mason County Action Group
Kim Sang, RN, WVMI
Kay Ikerd, RN, Department Representative, BoSS

All persons participated by speakerphone.

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 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 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2
- D-2 Pre-Admission Screening (PAS) for Aged and Disabled Waiver Services, dated February 3, 2009
- D-3 Notice of Decision dated February 5, 2009

VII. FINDINGS OF FACT:

- 1) Claimant is a 56-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom an assessment was completed on February 3, 2009 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about February 5, 2009. The notice states, in pertinent part:

You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. 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 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2 (Exhibit D-1), states, in pertinent part:

501.3.2.1 LEVELS OF CARE CRITERIA

There are four levels of care for 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 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.

All of the above levels of care criteria information also applies to Personal Options.

503.2.1 LEVELS OF CARE SERVICE LIMITS

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

- 4) The West Virginia Medical Institute (WVMI) RN reviewed the Claimant's February 3, 2009 PAS, and determined that the Claimant required a Level of Care "C." This was derived from her assessment of twenty (20) points for the Claimant, and resulted in the 124 monthly service hours noted in Exhibit D-3. Six (6) points were assigned for medical conditions and symptoms, one (1) for vacating, eleven (11) for functional abilities in the home, one (1) for professional and technical care needs, and one (1) for medication administration.
- 5) Areas of dispute noted on the Claimant's behalf were *prognosis*, the medical conditions or symptoms of *anxiety* and *contractures*, and the functional abilities of *bathing*, *grooming*, *vision*, *hearing*, and *wheeling*.
- 6) With regard to *prognosis*, testimony on the Claimant's behalf asserted that although she was identified as "deteriorating" on this PAS, she had been identified as "terminal" in the past, and contended that the Claimant's diagnosis of Multiple Sclerosis causes her to be terminal. The Department responded that each PAS is a separate review, and the current PAS (Exhibit D-2) is the basis for their decision; it was additionally clarified that the Department's operating standard for a prognosis of "terminal" is six months.
- 7) Testimony on the Claimant's behalf stated that the Claimant should have been awarded a point for *anxiety*. The WVMI nurse testified that although there was a history of anxiety noted, there were no medications listed for anxiety and no diagnosis from a physician.
- 8) The Claimant testified that her toes are completely curled under, and that she cannot use them. The Case Manager RN for the Claimant contended that this condition should have been awarded as *contractures*. The WVMI RN testified that this is not considered contractures because it is a result of the tendons and ligaments freezing, and not the joint itself.
- 9) In the functional areas of *bathing* and *grooming*, the Claimant's Case Manager RN testified that she requires physical assistance frequently with her daily activities. The Department indicated that by classifying the Claimant as a 'Level 2' in these areas, they have already credited her as requiring physical assistance. The Department noted that for additional points to have been awarded in these areas, the Claimant would have to have been assessed as a 'Level 3,' or unable to assist in any way with bathing or grooming.

- 10) With regard to the functional areas of *vision* and *hearing*, testimony on the Claimant's behalf explained that due to the Claimant's Multiple Sclerosis, these problems are not correctable. The WVMi RN testified that, for these areas, it is not a question of whether or not the condition itself is correctable, but one of the individual's ability to function. The comments from the February 3, 2009 PAS (Exhibit D-2) on these functional areas state:

Vision: WEARS GLASSES --- IS ABLE TO READ WITH HER GLASSES ON ---- LEFT EYE HAS A LESIONS [*sic*] BEHIND IT FROM THE MS --- IT CAUSES IT TO HALF WAY SHUT

Hearing: IS DEAF IN LEFT EAR ----- CAN HEAR OUT OF THE RIGHT EAR

- 11) Testimony from the Claimant explained that she wheels independently with her electric wheelchair, but requires help with her manual wheelchair when she is upstairs in her home. The WVMi RN testified that she was not told at the time of the PAS that the Claimant only had a manual wheelchair upstairs, and that she would have assessed *wheeling* for the Claimant as a 'Level 3,' or requiring 'situational assistance,' if she had been aware of 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 assessed on the PAS assessment tool. The Claimant received twenty (20) points on her February 3, 2009 PAS, and was awarded a Level of Care 'C,' with a corresponding 124 monthly service hours. For the higher Level of Care, "D," the Claimant would require at least twenty-six (26) points. In all the areas presented except for one, the evidence and testimony revealed that the Department correctly assessed the Claimant.
- 2) In the area of *wheeling*, the Department acknowledged that, given clarification, they would have assessed the Claimant as a 'Level 3' instead of a 'Level 2'. This change – in conjunction with the Claimant meeting the required *walking* assessment of 'Level 4' – results in two (2) additional points that should have been awarded to the Claimant.
- 3) With a total of twenty-two (22) points, the Department correctly assessed the Claimant as requiring a Level of Care 'C,' and the corresponding 124 monthly service hours.

IX. DECISION:

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.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of July, 2009.

**Todd Thornton
State Hearing Officer**