



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Board of Review  
P.O. Box 1736  
Romney, WV 26757

Earl Ray Tomblin  
Governor

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

July 19, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 13, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services 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.

Eligibility for the Aged and Disabled Waiver program is based on current policy and regulations. These regulations provide that the number of homemaker service hours are 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/hours which are reviewed and approved by WVM (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.3).

The information which was submitted at your hearing revealed that while you remain medically eligible for participation in the Aged and Disabled Waiver program, your Level of Care should be reduced from a level "D" to a level "C" Level of Care. As a result, you are eligible to receive 4 hours per day or 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to Uphold the proposal of the Department to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services program.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

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

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1264**

**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 a timely appeal, filed May 23, 2011.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

**II. PROGRAM PURPOSE:**

The Aged and Disabled Waiver program, hereinafter ADW, 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 Attorney-In-Fact

-----, RN

-----, Case Manager

Kay Ikerd, RN-Bureau of Senior Services (BoSS)

Debbie Sickles, RN-West Virginia Medical Institute

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its proposal to reduce the Claimant's homemaker service hours provided through the Medicaid Aged and Disabled Waiver program.

**V. APPLICABLE POLICY:**

Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and Chapter 501.3.2.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and Chapter 501.3.2.2
- D-2 Pre-Admission Screening Assessment dated May 9, 2011
- D-3 Notice of Decision dated May 13, 2011

**Claimants' Exhibits:**

- C-1 [REDACTED] RN Assessment dated May 20, 2011 and additional correspondence.

**VII. FINDINGS OF FACT:**

- 1) On May 9, 2011, the Claimant was medically assessed to determine her continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver program. Prior to the re-evaluation, the Claimant was assessed at a Level "D" LOC under the program guidelines.
- 2) On May 13, 2011, the Claimant was issued a Notice of Decision, Exhibit D-3. This exhibit noted that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines, but her corresponding level of care would be reduced to 124 hours per month (LOC "C" determination).
- 3) Ms. Debbie Sickles, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, the Pre-Admission Screening assessment, hereinafter PAS, as part of her medical assessment of the Claimant. Ms. Sickles testified that the Claimant was awarded a total of 25 points during the evaluation, which qualifies for a Level "C" LOC.
- 4) The Claimant's representatives contend that an additional point should have been awarded in the area of bowel incontinence. The PAS assessment documents that -----, RN for [REDACTED] -----, Case Manager for [REDACTED] and the Claimant's Homemaker Aide were present during the assessment. In regards to the Claimant's bowel

incontinence, Ms. Sickles documented that those present at the assessment denied any bowel incontinence for the Claimant and stated that she did not observe during the assessment the Claimant's use of any padding or other incontinence supplies on the household furniture. Testimony from the Claimant's representatives indicated that -----, the Claimant's Attorney-In-Fact who is more familiar with the Claimant's condition, was unable to attend the corresponding WVMI assessment. Testimony indicated that upon conclusion of the assessment, [REDACTED] had conversations with -----, which suggested that the Claimant was experiencing bowel incontinence at the time of the assessment. ----- testified that the Claimant's episodes of bowel incontinence have increased since the assessment. ----- indicated that the Claimant was hospitalized on May 20, 2011, after the completed assessment, and her condition has worsened since the hospitalization. ----- added that the Claimant's Homemaker Aide will assist and redirect the Claimant to the restroom, when present in the home, but the Claimant will experience incontinence episodes on the weekend and times in which the aide is not present in the home. ----- purported that she attempted to obtain additional information regarding the Claimant's condition to submit to WVMI from the Claimant's physician; however, the Claimant's physician refused to comply with those requests. The Claimant's representatives submitted Exhibit C-1, which demonstrates their attempts to secure additional information from the Claimant's physician to submit to WVMI. Additionally, the exhibit documents a [REDACTED] RN assessment which was completed May 20, 2011 and documents partial incontinence for the Claimant. It shall be noted that this assessment was completed after the WVMI assessment on May 9, 2011, and was not considered in the State Hearing Officer's decision.

The matter before the Board of Review is whether or not the assessment completed by the assessing nurse in May 2011 was accurate based on information known at the time. Testimony revealed that the Claimant's representatives denied that the Claimant experienced episodes of bowel incontinence at the May 9, 2011 assessment; however, the Claimant's Attorney-In-Fact later informed Companion Care Corporation that the Claimant was experiencing some episodes of bowel incontinence, which have increased since May 20, 2011. Based on evidence and testimony presented during the hearing, the assessing nurse correctly assessed the Claimant with the information presented during the assessment and additional points in the area of bowel incontinence cannot be awarded.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2: 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 - 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 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

The total number of points allowable 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

### **VIII. CONCLUSIONS OF LAW:**

- 1) Medicaid policy dictates that an individual's Level of Care (LOC) is determined by the number of points awarded on the Pre-Admission Screening (PAS) assessment tool.
- 2) On May 9, 2011, the Claimant was assessed a total of 25 points as part of her PAS assessment completed by West Virginia Medical Institute.
- 3) As a result of evidence and testimony presented during the hearing process, no additional points may be awarded. The Claimant's total points remain at 25.
- 4) In accordance with existing policy, an individual with 25 points qualifies as a Level "C" LOC and is therefore eligible to receive 4 hours per day or 124 hours per month of homemaker services.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) 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, 2011.**

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**Eric L. Phillips  
State Hearing Officer**