



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

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

November 8, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 28, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours under the Aged/Disabled Waiver program from Level D to Level C care.

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

The information submitted at your hearing revealed that you no longer meet the medical criteria to continue receiving Level D care.

It is the decision of the State Hearing Officer to **Uphold** the proposal of the Department to reduce your homemaker hours to Level C care.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau of Senior Services  
West Virginia Medical Institute  
[REDACTED]

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

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

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1897**

**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 October 28, 2011 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 September 8, 2011.

It should be noted here that the Claimant's benefits under the Aged/Disabled Waiver program have continued at Level D care pending a decision.

**II. PROGRAM PURPOSE:**

The program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health and Human Resources.

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

-----, Witness for Claimant

-----, Witness for Claimant

-----, Case Manager, [REDACTED]

-----, Homemaker RN, [REDACTED]

-----, Homemaker

Kay Ikerd, RN, Bureau of Senior Services  
Teresa McCallister, RN, West Virginia Medical Institute

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department's proposal to reduce Claimant's homemaker hours is correct.

**V. APPLICABLE POLICY:**

Aged/Disabled Waiver Services Policy Manual § 501.3

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

**Department's Exhibits:**

- D-1 Aged/Disabled Waiver Services Policy Manual § 501.3
- D-2 Pre-Admission Screening dated August 30, 2011
- D-3 Notice of Decision dated September 6, 2011

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on August 30, 2011. A Pre-Admission Screening (PAS) was completed that date by Teresa McCallister, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant was awarded 22 points on the PAS, reducing his homemaker hours from Level D to Level C care.

- 2) -----, Claimant's mother, testified that Claimant takes breathing treatments. She stated Claimant is supposed to be on continuous oxygen, but he has been unable make it to the doctor to start the treatments. -----stated Claimant has chronic urinary tract infections and when he has an infection, his catheter leaks. -----stated she cannot take care of her son all on her own.

- 3) -----, Case Manager, stated she has tried to get a confirmation of diagnoses of arthritis, dysphagia and contractures from Claimant's physician with no success. ----- stated they will continue to try to get these diagnoses from the physician.

----- stated Claimant cannot get into his wheelchair and strapped into his harness without physical assistance due to his paralysis.

- 4) Claimant testified that he can maneuver his wheelchair once someone helps him into it and straps him into the harness. Claimant stated he uses a harness in his wheelchair to prevent him from falling. Claimant stated occasionally he “gets into a bind” with his wheelchair and needs someone to help him with its operation. Claimant stated he has urinary tract infections frequently, causing leakage from his catheter.
- 5) Teresa McCallister, RN with WVMJ testified to the PAS she completed for Claimant in August 2011. Ms. McCallister stated she requested verification of diagnoses of arthritis, dysphagia and contractures from Claimant’s physician but did not receive a response. Ms. McCallister stated without a diagnosis or medications, she could not award Claimant any points in these areas.

Ms. McCallister stated Claimant advised her that he could operate his power wheelchair independently and that he only had leakage from his catheter when he had a urinary tract infection. Ms. McCallister testified she was not aware that Claimant had chronic urinary tract infections or the frequency of the catheter leakage.

- 6) Aged/Disabled Waiver Services Policy Manual § 501.3.2.1 and 501.3.2.2 states:

- #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) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points obtained on the PAS assessment tool. Claimant was awarded 22 points as the result of a PAS completed by WVMI in August 2011 in conjunction with his annual medical evaluation.
- 2) Claimant advised the WVMI nurse that he was able to operate his wheelchair independently. Claimant denied leakage from his catheter unless a urinary tract infection was present. Claimant failed to inform the WVMI nurse that he experienced chronic urinary tract infections and the frequency of the leakage. Diagnoses of arthritis, dysphagia and contractures were not verified by a physician nor was Claimant taking any prescription medications to support the presence of these conditions.
- 3) The WVMI nurse correctly evaluated Claimant as requiring Level C care based on the information made known to her during the August 2011 medical assessment.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's homemaker hours from Level D to Level C care.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 8<sup>th</sup> day of November 2011.**

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**Kristi Logan**  
**State Hearing Officer**