



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, WV 25313

Earl Ray Tomblin  
Governor

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

November 29, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 22, 2011. Your hearing request was based on the Department of Health and Human Resources' action to reduce your homemaker service hours in the Aged/Disabled Waiver Program due to a reduction in 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.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state that for the Aged/Disabled Waiver Program, individuals are evaluated by utilizing the Pre-Admission Screening (PAS) tool to assess their functioning abilities in the home. Points are assigned by the nurse based on the information derived from the PAS assessment interview, and the level of care is divided into four categories of assistance. The individual's level of care is determined based on the points assessed during the completion of the PAS. (Aged and Disabled Waiver Manual Section 501)

The information provided during your hearing shows that you meet the medical requirements for Level of Care (C) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce your level of care under the Aged/Disabled Waiver Program from Level (D) to Level (B).

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI / Right at Home

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

**IN RE:**       -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-2110**

**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 November 22, 2011.

**II. PROGRAM PURPOSE:**

The Aged/Disabled Waiver (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  
-----, Claimant's witness  
-----, Claimant's witness  
-----, Claimant's witness  
Kay Ikerd, Department's representative  
Stephanie Schiefer, Department's witness

It should be noted that the parties participated in the hearing by conference call.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its proposal to reduce the Claimant's Level of Care benefits under the Aged/Disabled Home and Community-Based Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 501

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

**Department's Exhibits:**

- D-1 Pertinent provisions of Aged/Disabled Waiver Policy Manual
- D-2 Pre-Admission Screening (PAS) assessment completed September 7, 2011
- D-3 Notice of Decision dated September 8, 2011

**Claimant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) The Claimant was undergoing a required annual re-evaluation for the Title XIX Aged/Disabled Waiver Program during the month of September 2011.
- 2) A West Virginia Medical Institute (WVMI) Registered Nurse, Stephanie Schiefer, visited the Claimant in her home and completed her Pre-Admission Screening (PAS) medical assessment (D-2) on September 7, 2011. She determined that the Claimant continues to meet the medical requirements for the program; however, she assessed the Claimant at a reduced level from the previous determination - Level of Care (B) rather than Level (D). The Claimant received sixteen (16) points during the PAS assessment, which places her in Level (B) care. For Level of Care (D), the Claimant would need at least twenty-six (26) points. For Level of Care (C), the Claimant would need at least eighteen (18) points.
- 3) During the hearing, the WVMI nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area.

- 4) The Claimant contends that she should also receive points in the assessed areas of orientation, wheeling, vision, pain, dysphagia, dyspnea, chest pain at rest, and chest pain with exertion.

In the area of “orientation”, the nurse assessed the Claimant as being oriented and documented the following during the PAS assessment interview:

Denies orientation, oriented to people, place, and time...”nothing wrong with her mind,” per homemaker.

The Claimant’s witness, -----, is the Claimant’s Registered Nurse (RN) at Right at Home. Ms. [REDACTED] stated that she evaluated the Claimant in her home on August 1, 2011, and that the Claimant told her at that time that she gets confused at times, and that she sometimes forgets to turn off the kitchen stove. The Claimant stated that she forgets about everything – “little stuff.” The Claimant’s Homemaker, -----, added that the Claimant often forgets dates and that her forgetfulness is minor.

In the area of “wheeling”, the nurse assessed the Claimant as being able to wheel independently in her home. The WVMI nurse documented the following during the PAS assessment interview:

Motorized wheelchair, reports able to go from room to room and around corners even out in the yard. Van is equipped with chair that lifts and extends outside van.

Ms. [REDACTED] stated that during her August 2011 evaluation of the Claimant’s needs, the Claimant told her that she needs situational assistance with her chair. -----added that the Claimant has a motorized wheelchair in her home and that maneuvering through doors is not a problem unless the door is “latched.”

In the area of “vision”, the WVMI nurse assessed the Claimant’s vision as impaired, but correctable, and documented the following during the PAS interview assessment:

Vision: “fine,” wears glasses all the time.

Ms. [REDACTED] stated that during her August 2011 evaluation of the Claimant’s needs, the Claimant told her she was “pretty blind.” The WVMI nurse stated that she observed the Claimant read and sign the consent form during the assessment. The Claimant stated that everything is “cloudy”, but added that she is not blind. The Claimant stated that she had her prescription eyeglasses renewed about 3 months ago. She added that she watches television but can’t distinguish what she is viewing.

In the area of “pain”, the WVMI nurse assessed the Claimant as having no pain, and documented the following during the PAS interview assessment:

Pain: denies this. Diagnosis not listed.

Ms. [REDACTED] stated that during her August 2011 evaluation of the Claimant's needs, the Claimant told her that she has pain that is generalized. The Claimant stated that she has arthritis, that she sometimes can't stand for the weight of her covers to touch her, and that she has pain when it rains. She added that she is used to the pain and that she takes Advil when in pain. The Claimant is diagnosed with degenerative joint disease.

In the area of "dysphagia", the WVMi nurse assessed the Claimant as having no dysphagia, or difficulty swallowing, and documented the following during the PAS assessment interview:

States no difficulty swallowing [sic] but gets choked easily. Cuts food in small pieces and uses straw to drink which is only way she can drink anything. Re-questioned and member stated no diff [difficulty] swallowing but occasionally chokes.

Ms. [REDACTED] stated that during her August 2011 evaluation of the Claimant's needs, the Claimant told her that she has to use a straw to keep from getting choked. The Claimant stated that she always uses a straw with liquids. There is no physician diagnosis available.

In the area of "dyspnea", the WVMi nurse assessed the Claimant as having no dyspnea, or shortness of breath, and documented the following during the PAS assessment interview:

Dyspnea: "Not really," None noted during assessment.

Ms. [REDACTED] stated that during her August 2011 evaluation of the Claimant's needs, the Claimant told her that she gets short of breath. Ms. [REDACTED] added that she observed the Claimant's dyspnea on that date. The Claimant states that she gets short of breath often and that she expects it.

In the areas of "chest pain at rest" and "chest pain with exertion", the WVMi nurse assessed the Claimant as having none, and documented the following during the PAS assessment interview:

Angina with Rest/Exertion: "little bit, not too much," denies ntg [nitroglycerin], states "quite some time" since had pain, no physician diagnosis of this.

Ms. [REDACTED] stated that during her August 2011 evaluation of the Claimant's needs, the Claimant told her that she has chest pain at rest and at exertion when she moves around. The Claimant stated that she cannot exert herself and that she does not exert herself. The nurse did not contact the physician for clarification.

- 5) Aged/Disabled Home and Community-Based Services Manual Section 501.3 – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

Applicants for the ADW Program must meet the following criteria to be eligible for the program:

C. Be approved as medically eligible for NF Level of Care.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 states in pertinent part:

Purpose: The purpose of the medical eligibility review is to ensure the following:

A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.

C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

- 7) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 (D-1) LEVELS OF CARE CRITERIA states in pertinent part:

There are four levels of care for homemaker services. Points will be determined as follows, 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 given for j.

Wheeling

#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

- 8) Aged/Disabled Home and Community Based Services Waiver Policy Manual 501.3.2.2 LEVELS OF CARE SERVICE LIMITS states:

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

The total number of hours may be used flexibly within the month, but must be justified and documented on the POC. Example: If the POC shows 4 hours/day, Monday-Thursday and 5 hours on Friday, the additional hour on Friday must be justified on the POC.

- 9) Aged/Disabled Home and Community Based Services Waiver Policy Manual 501.3.4 states in pertinent part:

C. ...the QIO RN, through observation and/or interview process, completes the PAS. The RN will record observations and findings regarding the member's level of function in the home. RNs do not render medical diagnoses.

D. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

### VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that there are four levels of care for homemaker services. Points are determined based on the individual's medical condition and functional abilities at the time the PAS is completed. Points are assigned accordingly.
- 2) The Claimant was assessed at Level of Care (B) during her September 7, 2011 assessment having received sixteen (16) points. To be assessed at Level of Care (C), the Claimant must be assigned at least eighteen (18) points during the assessment; for Level of Care (D), the Claimant must be assigned at least twenty-six (26) points.
- 3) Policy provides that during the assessment process, the Department is to complete the PAS assessment by means of both observation and/or an interview process to determine the individual's functional ability in the home. Policy also specifies that in those cases where there is a medical diagnosis question, the nurse will attempt to clarify the information with the referring physician. In the event the nurse cannot obtain the information, he or she will document such, noting that supporting documentation from the referring physician was not received.

- 4) The Claimant disputed the Department's finding of no assessed point for orientation. The Claimant denied orientation issues during the PAS assessment, and her homemaker indicated that although the Claimant is forgetful, the forgetfulness is minor. There is insufficient evidence to support the award of a point in this area.
- 5) The Claimant disputed the Department's finding of no assessed point for vision. The Claimant reported that her vision was "fine" during the PAS assessment. There was insufficient evidence presented to support that the Claimant's vision is not correctable, therefore no point is awarded in this area.
- 6) The Claimant disputed the Department's finding of no assessed point for pain. The Claimant has degenerative joint disease, and testimony during the hearing supports that the Claimant has generalized pain. One (1) point is awarded for the Claimant's pain.
- 7) The Claimant disputed the Department's finding of no assessed point for dysphagia. The Claimant was not clear in her testimony regarding whether she has difficulty swallowing and there is no physician diagnosis. She stated during the PAS assessment that she has no difficulty swallowing. There is insufficient evidence to support an award of points in this area.
- 8) The Claimant disputed the Department's finding of no assessed point for dyspnea. The Claimant reported during the PAS assessment that she does not have shortness of breath – she reported "not really" when asked whether she has shortness of breath. The evidence does not support an award of points in this area.
- 9) The Claimant disputed the Department's findings of no assessed points for chest pain at rest and chest pain with exertion. The Claimant clearly reported that she has some pain at rest and with exertion. Testimony from the Claimant supports that the Claimant does have chest pain. The nurse did not follow-up with the physician to determine whether points could be awarded in these areas. One (1) additional point is awarded for chest pain at rest, and one (1) additional point is awarded for chest pain with exertion.
- 10) A total of three (3) additional points have been awarded in the areas of pain, chest pain at rest and chest pain with exertion. The Claimant now has a total of nineteen (19) points, which supports a Level of Care (C). The Department was not correct in its decision to reduce the Claimant's Level of Care from Level (D) to Level (B).

## **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to reduce the Claimant's Level of Care from Level (C) to Level (B).



**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 29<sup>th</sup> Day of November, 2011.**

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**Cheryl Henson  
State Hearing Officer**