



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 23, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 11, 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 points and 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  
Sarah Carpenter, WVM I  
CCIL, Case Management Agency

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

**IN RE:**        -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-637**

**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 23, 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 11, 2012 on a timely appeal, filed February 1, 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

-----, Claimant's representative

-----, Claimant's witness

-----, Claimant's witness

Kay Ikerd, Department representative

Sarah Carpenter, 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 17, 2012
- D-3 Notice of Decision, dated January 18, 2012
- D-4 Pre-Admission Screening for Aged/Disabled Waiver Services, dated January 29, 2011

**VII. FINDINGS OF FACT:**

- 1) The Claimant is an 89-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on January 17, 2012 (Exhibit D-2). The reevaluation completed in the prior year (Exhibit D-4), on January 29, 2011, was additionally submitted by the Department.
- 2) The Department issued a Notice of Decision to the Claimant on or about January 18, 2012 (Exhibit D-3). This notice states, in pertinent part:

**You have been determined medically eligible to continue to receive Waiver services.**

The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month.

- 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:

<b>Section</b>	<b>Description of Points</b>
#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 <b>a</b> through <b>i</b> .  Level 3 – 2 points for each item <b>a</b> through <b>m</b> <b>i</b> (walking) must be at Level 3 or Level 4 in order to get points for <b>j</b> (wheeling)  Level 4 – 1 point for <b>a</b> , 1 point for <b>e</b> , 1 point for <b>f</b> , 2 points for <b>g</b> through <b>m</b>
#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 17, 2012, Pre-Admission Screening form (“PAS”) (Exhibit D-2), Sarah Carpenter – a Registered Nurse employed by West Virginia Medical Institute (“WVMI”) – assessed 16 points for the Claimant. Seven points were awarded for medical conditions and symptoms, one for vacating, seven for functional abilities in the home, and one for medication administration. This point level corresponds to the level of care “B,” and the service limit of 93 hours monthly noted on the decision (Exhibit D-3) issued to the Claimant.
- 5) The Claimant disputed the following areas: *continence of bladder, continence of bowel, and dementia.*
- 6) -----, the Claimant’s daughter, testified that she lives with the Claimant and that the Claimant suffers from *dementia*. Ms. Carpenter testified that for her to have awarded the Claimant a point in this area, she would have to have received a diagnosis of the condition from a physician or documented medication for the condition, and she had neither.
- 7) Regarding the areas of *continence of bladder* and *continence of bowel*, ----- testified that she cleans the Claimant’s laundry and that the Claimant is incontinent in both areas. When asked about the weekly frequency of accidents, ----- changed her testimony multiple times. First, she stated the Claimant has two to three accidents per week of both type combined, then that the Claimant has two to three bladder accidents per week, then stating three bladder accidents per week, and finally stating three or more accidents per week. In response, the Claimant testified that it was not that frequent, but it was unclear to which statement of frequency she was referring.
- 8) Ms. Carpenter testified regarding her assessment of the Claimant as continent of bladder and bowel. She made the following PAS comments on the day of the assessment, in pertinent part (“HM” stands for homemaker, and “M” stands for member – or the Claimant):

Incontinence of Bowel/Bladder: reports bladder/bowel incontinence, denies use of incontinent supplies, both HM and M deny stress incontinence episodes of urine, in the past 7 days denies incontinent episodes of bowel, in the past 7 days denies incontinent episodes of bladder, upon review, states “I have wet myself before but not in the past week, been a while”

Comments further state:

The HM does follow the M as she toilets during the POC hours.

- 9) Ms. Carpenter testified that during her assessment she spoke to both the Claimant and the Claimant's homemaker at the time and confirmed her findings with them, including the findings regarding continence. Kay Ikerd, representative for the Department, argued that the Claimant's homemaker at the time would have been aware of any incontinence on the part of the Claimant because the homemaker duties include laundry for the Claimant.

### 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 16 points on her January 17, 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 one condition – *dementia* – that could not be awarded without a physician's diagnosis or documented medication for the condition. The assessment of the Department in this area was correct.
- 3) Testimony from the Claimant's daughter regarding the frequency of episodes of incontinence is unconvincing, as it changed multiple times during the hearing. The Department's reviewing nurse confirmed her findings in the areas of *continence of bladder* and *continence of bowel* with both the Claimant and her homemaker after concluding her assessment. The Claimant's homemaker would be aware of continence issues and would have no reason to underestimate the frequency of the Claimant's episodes of incontinence. The frequency given at the time was no accidents in either area within the prior week – a frequency insufficient for a finding of incontinence. The Department's assessment in both of these areas is correct.
- 4) With no additional points revealed through evidence and testimony, the Department correctly determined points, level of care, and homemaker hours for the Claimant.

### 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.**

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**Todd Thornton  
State Hearing Officer**