



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

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

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

**Earl Ray Tomblin**  
Governor

May 14, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 3, 2012. 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 Services 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 West Virginia Medical Institute (WVMI) (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.5.1).

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".

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, Bureau of Senior Services  
Central West Virginia Aging Services

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

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-839**

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on a timely appeal, filed February 28, 2012.

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  
-----, Homemaker Aide-Central West Virginia Aging Services (CWVAS)  
-----, Case Manager-Central West Virginia Aging Services (CWVAS)  
-----, Homemaker RN-Central West Virginia Aging Services (CWVAS)  
Kay Ikerd, RN-Bureau of Senior Services (BoSS), Department representative  
Brenda Myers, RN-West Virginia Medical Institute (WVMI), Department witness

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 501.5.1.1(a) and 501.5.1.1 (b)

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

**Department's Exhibits:**

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.1(a) and 501.5.1.1 (b)
- D-2 Pre-Admission Screening dated January 23, 2012
- D-3 Notice of Decision dated January 31, 2012
- D-4 Pre-Admission Screening dated February 2, 2011

**Claimant's Exhibits:**

- C-1 Prescription Pad Note (illegible) submitted as late additional information

**VII. FINDINGS OF FACT:**

- 1) On January 23, 2012, 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 Services program. Prior to the re-evaluation, the Claimant was assessed at a Level "D" LOC under the program guidelines.
- 2) On January 31, 2012, the Claimant was issued Exhibit D-3, Notice of Decision, which documents 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 could not exceed 124 hours per month (LOC "C" determination).

- 3) Brenda Myers, West Virginia Medical Institute (WVMI) assessing nurse, completed Exhibit D-2, the Pre-Admission Screening (PAS) assessment, as part of her medical assessment of the Claimant. Ms. Myers testified that the Claimant was awarded a total of 24 points (Level "C" determination) and compared her findings to the Claimant's previous 2011 PAS assessment (27 points) (Exhibit D-4). Ms. Myers noted adverse changes in the areas of grooming, orientation and hearing from the previous assessment, which resulted in the reduction of hours in the current evaluation.
- 4) -----, Claimant's Attorney-In-Fact, contends that additional points should have been awarded in the areas of grooming, transferring and hearing.

The following addresses the contested areas:

**Grooming**-----, Claimant's Attorney-In-Fact, testified that her mother requires total care for grooming because of shaking in her hands. ----- acknowledged that her mother was able to wash her face at times, but the homemaker aide provided the majority of the Claimant's grooming care. Ms. Myers assessed the Claimant as Level 2 requiring Physical Assistance and documented her findings in the PAS assessment as "HM [Homemaker] washes her hair for her and must comb/brush hair for her. Dtr [daughter] clips her fingernails and foot MD does toenails. She states she can apply lotion to few areas she can reach, hands, arms, abdomen and HM applies to rest of her body. She does not have any teeth and will brush her tongue. HM states some days she can hold the toothbrush and brush her own tongue and other days when tremors are worse she does it for her. HM states upon review that member basically just applies lotion to her hands and she does the rest." Ms. Myers indicated the Claimant's ability to wash her face is an aspect of bathing and is not considered when assessing the functional ability of grooming. Ms. Myers explained that she was unable to assess the Claimant as requiring total care in the contested area because of the Claimant's ability to participate with brushing her tongue and applying lotion to her hands.

Policy requires that the maximum number of points concerning the functional area is awarded when the individual is assessed at a Level 3 or higher meaning that the individual requires total care in their functional abilities. While the Claimant experiences difficulties in the contested area, information relayed during the assessment revealed that she could participate in some aspects of grooming; therefore, the assessing nurse correctly assessed the Claimant and additional points in the contested area cannot be awarded.

**Transferring**----- provided testimony concerning her mother's requirement for one-person assistance and indicated that the homemaker aide provided her mother with this assistance on the day of the assessment. Ms. Myers assessed the Claimant as a Level 3, requiring one-person assistance, and noted in PAS assessment that she required assistance when transferring from her recliner.

Policy requires that the maximum number of points are issued to the individual when assessed at a Level 3 or higher meaning the individual requires one or two-person assistance in the home. The Claimant was assessed as requiring one-person assistance and the maximum

number of points was assessed toward the Claimant's LOC; therefore, additional points in the contested area cannot be awarded.

**Hearing**----, Homemaker RN-Central West Virginia Aging Services, acknowledged that the Claimant is hearing impaired and wears hearing aids, but does not hear well with them. ---- indicated that the Claimant would answer questions from the assessing nurse with a "yes or no" answer, but required clarification of the question from those present at the assessment. ---- provided her opinion concerning hearing aids indicating that they were a "modification and not a correction" and believed that the device did not correct the Claimant's hearing. Kay Ikerd, RN-Bureau of Senior Services explained policy and indicated that the assessing nurse is not qualified to make a medical assessment of an individual's vision or hearing and the purpose of the nurse's assessment is to evaluate the individual's functional level of vision or hearing. Ms. Myers assessed the Claimant's hearing as Impaired/Correctable and documented the following in the PAS, "[Claimant] has hearing impairment and wears hearing aides [sic] in both ears. Dtr [daughter] chuckles and states she has selective hearing. RN spoke in normal tone of voice and no repeats needed." Ms. Ikerd clarified the term correctable indicating that an individual's hearing is good enough to converse with other individuals. ---- purported that Exhibit C-1, Prescription Note Pad from the Claimant's physician was submitted to West Virginia Medical Institute [WVMI] to document that the Claimant is hearing impaired and her impairment is not correctable. ---- acknowledged that this information was submitted late to WVMI and not accepted. It shall be noted that this exhibit is illegible and the information cannot be deciphered from the provided copy. Additionally, this information was considered late additional information by WVMI and was not included in the assessment of the Claimant because it was received after the Notice of Decision (Exhibit D-4) was rendered. ---- indicated that her mother can "pick up words here and there" and indicated that when her mother was asked questions during the assessment Ms. Myers would answer for her mother before her mother could answer the question. Ms. Myers rebutted ---- comments indicating that she treats individuals with respect and has never had any prior accusations that she intimidates patients during assessments and answers questions for them. Ms. Myers indicated that she reviewed all indicators of the assessment with those present and all were in agreement with her findings at the conclusion of the assessment.

The matter before the Board of Review is to address whether or not the assessing nurse correctly assessed the Claimant's functional abilities based on information provided by the Claimant and her representatives at the assessment. The assessing nurse's professionalism during the assessment is not under review or part of the appeals process. Furthermore, there was no factual evidence presented during the hearing to indicate that the Claimant received an unfair assessment, and any testimony concerning the assessing nurse's professionalism was given no weight in the State Hearing Officer's decision as it is considered one parties word against the others.

Policy requires that the assessing nurse cannot render medical diagnoses. In the event that a medical diagnosis is questioned, the decision is based on medical evidence presented by the appropriate medical professional. Testimony indicated that the Claimant utilizes hearing aids and communicated with the assessing nurse during the assessment. Based on the information provided during the assessment, the assessing nurse assessed the Claimant's functional level of

hearing as impaired but correctable. Upon conclusion of the assessment, the assessing nurse provided the Claimant and her representatives the opportunity to dispute any of her findings and no disagreement to the assessing nurse's findings of the Claimant's functional abilities was verbalized. While the Claimant's representatives provided medical evidence concerning the Claimant's hearing ability, this information was considered late and not evaluated by the assessing nurse as her final decision had been rendered. Therefore, the WVMI nurse correctly assessed the Claimant's hearing ability at the assessment and additional points in the contested area cannot be awarded.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1(a) and (b) documents there are 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- 0-62 range of hours per month
- Level B - 10 points to 17 points-63-93 range of hours per month
- Level C - 18 points to 25 points-94-124 range of hours per month
- Level D - 26 points to 44 points- 125-155 range of hours per month

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.3 F documents:

Nurses shall not render medical diagnoses. In those cases where there is a medical diagnosis question, the decision shall be based on medical evidence presented by appropriate medical professionals.

**VIII. CONCLUSIONS OF LAW:**

- 1) Medicaid policy stipulates 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 January 23, 2012, the Claimant was assessed a total of 24 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 24.
- 4) In accordance with existing policy, an individual with 24 points qualifies as a Level "C" LOC and is therefore eligible to receive a maximum of 124 monthly hours of homemaker services.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the Department's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Services 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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**Eric L. Phillips**  
**State Hearing Officer**