



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

May 7, 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 hours under the Aged/Disabled Waiver program from Level C care to Level B.

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 § 501.5).

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

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

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

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

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-972**

**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 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 March 1, 2012.

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

**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's Attorney in Fact  
-----, Witness for Claimant

Kay Ikerd, RN, Bureau of Senior Services (testified by phone)  
Teena Testa, RN, West Virginia Medical Institute (testified by phone)

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

This hearing was held by videoconference.

**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 § 501.5.1

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

**Department's Exhibits:**

- D-1 Aged/Disabled Waiver Services Policy Manual § 501.5.1
- D-2 Pre-Admission Screening dated February 14, 2012
- D-3 Notice of Decision dated February 21, 2012
- D-4 Pre-Admission Screening dated February 22, 2012

**Claimants' Exhibits:**

- C-1 Hearing Summary, Correspondence from -----, DO dated April 12, 2012 and Medication List

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on February 14, 2012. A Pre-Admission Screening (PAS) was completed that date by Teena Testa, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received 14 points on the February 2012 PAS, reducing her level of care from Level C to Level B (D-3).

- 2) -----, Claimant's granddaughter, testified on behalf of Claimant the areas in which Claimant should have received points on the 2012 PAS. ----- stated she did not feel as though this year's PAS was as thorough as the previous year's. ----- stated Claimant did not receive points for pain, contractures, dyspnea, bladder incontinence, orientation, transferring, hearing and communication. ----- added Claimant was having a "good day" on the date of the evaluation, which is infrequent.

----- testified Claimant has rheumatoid arthritis and osteoarthritis and experiences pain daily from these conditions. Claimant denied using pain medications during the assessment, but ----- felt like Claimant thought the WVMI nurse was referring to narcotics. ----- stated Claimant takes Tylenol and uses topical rubs for pain, such as Ben Gay for arthritic pain. ----- stated Claimant has contractures as a result of arthritis, but the PAS incorrectly referred to the contractures on her feet as “bunions”. ----- stated her grandmother has shortness of breath during physical activities.

----- testified that Claimant has bladder accidents occasionally and may not have disclosed this to the WVMI nurse due to her pride. ----- stated Claimant is frequently disoriented and has mental confusion. She stated Claimant will repeat stories, calls family members the wrong names and does not recognize what day of the week it is. ----- relates this disorientation to Claimant’s arthritis medication, which causes confusion for days after taking it. ----- stated Claimant takes this medication on Wednesdays, and the assessment was completed on a Tuesday (C-1).

----- testified Claimant no longer needs physical assistance in transferring, however she gets dizzy upon rising and must wait several minutes before moving to stabilize herself. ----- stated Claimant falls more often this year. ----- stated Claimant cannot hear at all without her hearing aids, which do not correct her hearing completely. Claimant’s inability to hear properly affects her communication. ----- stated Claimant will often nod during a conversation signaling that she has heard what was said, when in reality she has not. Claimant will ramble and speak off topic because she cannot hear what is being said.

- 3) Teena Testa, RN with WVMI, testified to the PAS she completed for Claimant in February 2012, in comparison to the PAS completed in 2011. Ms. Testa stated Claimant did not have diagnoses or prescriptions for pain, contractures or dyspnea. Claimant had previously been given points for these medical conditions in 2011 but Ms. Testa stated she cannot give points for medical conditions without a diagnosis or prescription medication. Claimant also received additional points for transferring and communication in 2011 (D-2 and D-4).

Ms. Testa stated that the day of the assessment, Claimant was oriented to person, place and time and carried on an appropriate conversation. Ms. Testa stated she had no reason to believe Claimant experienced disorientation. Claimant denied urinary incontinence but advised her of bowel incontinence.

Ms. Testa stated Claimant participated in bathing, dressing and grooming and therefore, could not be rated as total care in those areas. Ms. Testa was advised that Claimant did not require hands-on physical assistance to transfer and observed her rising from a seated position using furniture.

Ms. Testa stated Claimant was able to hear the questions asked of her and participated in the conversation. Claimant’s speech was clear and understandable so Ms. Testa could not give points in the areas of hearing or communication. Ms. Testa pointed out that

Claimant's daughter and homemaker were present during the assessment and did not contest her findings.

4) Aged/Disabled Waiver Services Policy Manual § 501.5.1.1 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 14 points as the result of a PAS completed by WVMi in February 2012 in conjunction with her annual medical evaluation.
- 2) Claimant did not have diagnoses for dyspnea, contractures or pain and did not have prescribed medications for these conditions. The WVMi nurse cannot diagnose a medical condition and without prescription medications to treat the conditions, points cannot be awarded.

- 3) Claimant and her representative denied urinary incontinence to the WVMI nurse during the medical evaluation, but disclosed bowel incontinence. The nurse can only make an assessment based on the information made known to her at the time. Claimant was correctly evaluated as being continent of urine based on the information made available at the time.
- 4) Claimant's speech was clear and understandable during the assessment, which is a separate functional ability from hearing. Claimant communicated appropriately during the assessment and any bouts of disorientation were not revealed to the WVMI nurse. No additional points can be awarded in hearing, communication or disorientation.
- 5) Based on the testimony and documentation provided, Claimant no longer requires a Level C care.

**IX. DECISION:**

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

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 7<sup>th</sup> day of May 2012**

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