



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

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

August 2, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 29, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours from Level D care to Level C.

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 WVMi (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 Hearing 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 & HUMAN RESOURCES  
BOARD OF REVIEW**

-----,

**Claimant,**

v.

**Action Number: 10-BOR-1330**

**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 June 29, 2010 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.

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

**II. PROGRAM PURPOSE:**

The Program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health & 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

----- Case Manager, -----

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 Home and Community Based Waiver Policy Manual § 501.3.2

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2
- D-2 Pre-Admission Screening Form dated March 31, 2010
- D-3 Diagnosis dated May 17, 2010 from [REDACTED] DO

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on March 31, 2010. A Pre-Admission Screening Form (PAS) was completed that date by Teresa McCallister, RN of the West Virginia Medical Institute (WVMI) (D-2).

Claimant received a total of 23 points on the PAS and her homemaker hours were reduced to 124 hours a month, or Level C care (D-2).

- 2) -----, Claimant's mother, stated they were contesting Claimant not receiving points in the areas of bowel incontinence, transferring and orientation. ----- testified that her daughter has loose bowels and often cannot make it to the bathroom. ----- stated this occurs 2-3 times a week. ----- also stated Claimant is unable to clean herself after using the bathroom.

----- testified that due to Claimant's diagnosis of mental retardation, she is often disoriented. ----- stated Claimant requires step-by-step directions to complete a task, and even then the directions must be repeated several times.

----- stated her daughter needs assistance rising from a sitting position. She stated Claimant falls backwards when standing up and requires help so that she will not slide back down.

- 3) [REDACTED] Claimant's case manager, testified that Claimant has difficulty following directions due to her mental retardation. Ms. [REDACTED] presented a diagnosis dated May 17, 2010 from [REDACTED] DO of bowel incontinence for Claimant (D-3).
- 4) Teresa McCallister, RN with WVMI, testified to the PAS she completed for Claimant. Ms. McCallister stated that in order for a person to receive points in orientation, they must be totally disoriented to person, place and time. Ms. McCallister stated she viewed Claimant following directions as given by her mother. Additionally, Ms. McCallister stated an inability to follow directions is a behavioral disorder and not cognitive.

Ms. McCallister testified that when ----- was questioned about Claimant's incontinence, she reported bowel accidents once weekly. It was reported to her that Claimant was able to transfer independently as well (D-2). Ms. McCallister stated she witnessed Claimant rise from the couch by pushing off from the seat. Ms. McCallister was unaware of Claimant's tendency to fall back when standing from a seated position.

- 5) Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2.1 and 501.3.2.2 states:

There will be 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- Decubitis- 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
  - #34- 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 23 points as the result of a PAS completed by WVMi in March 2010.
- 2) The information reported to the WVMi nurse during the assessment was that Claimant had bowel accidents only one (1) time a week. In order to receive points for continence, there must be episodes of incontinence of at least three (3) times a week. The diagnosis of bowel incontinence was dated six (6) weeks after the assessment. The assessing nurse correctly evaluated Claimant as continent of the bowel based on the information provided to her at the assessment. No additional points can be given for incontinence.
- 3) Claimant would have to be totally disoriented in order to receive points for orientation. Claimant was oriented to person and place at the assessment. Claimant was able to transfer up from a seated position at the assessment without physical assistance. The assessing nurse was advised that Claimant could transfer independently. Based on the information provided during the assessment, no additional points can be awarded in orientation or transferring.

**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 care to Level C.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 2<sup>nd</sup> day of August 2010.**

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**Kristi Logan  
State Hearing Officer  
Member, Board of Review**