



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

July 30, 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 C to Level B care.

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 WVMH (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.3).

The information submitted at your hearing revealed that your homemaker hours were correctly reduced to Level B care based on the information provided during the assessment.

It is the decision of the State Hearing Officer to **Uphold** the proposal of the Department to reduce your homemaker hours from Level C 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 & HUMAN RESOURCES  
BOARD OF REVIEW**

-----,

**Claimant,**

v.

**Action Number: 10-BOR-1357**

**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 C 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, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services

Teena Testa, 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 (PAS) Form dated March 31, 2010
- D-3 Diagnoses from [REDACTED] dated April 5, 2010
- D-4 Progress Notes from [REDACTED] dated May 4, 2010
- D-5 Hearing Request received April 14, 2010

**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 Teena Testa, RN of the West Virginia Medical Institute (WVMI) (D-2).

Claimant received a total of 15 points on the PAS and her homemaker hours were reduced to 93 hours a month, or Level B care (D-2).

- 2) -----, Claimant's daughter, testified they were contesting Claimant not receiving points for pain, dyspnea, and angina and for being rated level 3 in transferring instead of level 4.

-----stated Claimant has been diagnosed with a nerve condition in her leg that causes her pain. -----stated Claimant has chest pain and takes nitroglycerin. Her mother reported this to her physician on May 4, 2010 (D-4), but stated she had been having chest pain prior to that. -----stated it takes three (3) people and a Hoyer lift to transfer Claimant and she should have been rated as a level 4 for transferring. -----testified that her mother's condition has deteriorated since she received an increase in hours in October 2009 and could not understand the reasoning behind a decrease in hours.

- 3) -----, Claimant's case manager with [REDACTED] testified that Claimant has a diagnosis of sleep apnea (D-3). -----felt like this diagnosis should qualify Claimant for a point in dyspnea. -----stated Claimant has had lower back pain for years.
  - 4) Claimant testified that she is unable to take prescription pain medication as they do not help with the pain in her back or leg. Claimant stated she takes over-the-counter pain medication. Claimant stated she was not having any pain the day of the assessment and reported as much to the assessing nurse.
  - 5) Teena Testa, nurse reviewer with WVMI, testified to the PAS she completed on Claimant. Ms. Testa stated she was unable to award points in pain as Claimant did not have a diagnosis of pain nor was she prescribed any pain medications. Likewise, Claimant did not have a diagnosis of angina and was not taking nitroglycerin at the time of the assessment. Without diagnoses of pain and angina or prescribed medication for these conditions, Ms. Testa stated she could not give points in those areas.
- Ms. Testa stated sleep apnea is not a diagnosis for dyspnea. Ms. Testa stated an individual with sleep apnea experiences periods of apnea while sleeping but that sleep apnea is not considered a respiratory condition.
- 6) Testimony from Kay Ikerd of the Bureau of Senior Services revealed that even if Claimant was rated a level 4 in transferring, Claimant was awarded two (2) points as a level 3 which is the maximum points in this area.
  - 7) 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 15 points as the result of a PAS completed by WVMi in March 2010.
- 2) Claimant was unable to provide diagnoses of angina, dyspnea and pain and was not taking prescribed medications for these conditions at the time of the assessment. The assessing nurse cannot give a diagnosis and without a medication prescribed by a physician for a condition, points cannot be awarded in these areas.
- 3) Claimant was already awarded the maximum allowable points in the area of transferring on the PAS, no additional points can be derived in this area.

### IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision 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 30<sup>th</sup> day of July 2010.**

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