



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

Joe Manchin III  
Governor

P.O. Box 1736  
Romney, WV 26757

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

August 13, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 6, 2010. 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 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 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" Level of Care. As a result, you are eligible to receive 4 hours per day or 124 hours per month of homemaker services.

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, RN, BoSS

  
WVMI

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

-----,

**Claimant,**

v.

**Action Number: 10-BOR-1407**

**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 the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on August 6, 2010 on a timely appeal, filed June 1, 2010.

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 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:**

-----, Case Manager, [REDACTED]  
Kay Ikerd, RN, Bureau of Senior Services (BoSS)  
B.J. Sides, RN, West Virginia Medical Institute (WVMI)

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 501.3.2.1 and Chapter 501.3.2.2

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

**Department's Exhibits:**

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and Chapter 501.3.2.2
- D-2 Pre-Admission Screening assessment dated May 14, 2010
- D-3 Notice of Decision Dated May 25, 2010
- D-4 Hearing Request dated May 26, 2010
- D-5 Fax sent to Claimant's physician dated May 25, 2010

**VII. FINDINGS OF FACT:**

- 1) On May 14, 2010, the Claimant was medically assessed to determine his continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver (ADW) Program. Prior to the reevaluation, the Claimant was assessed at a Level "D" LOC under the program guidelines.
- 2) On May 25, 2010, the Claimant was issued a Notice of Decision, Exhibit D-3. This exhibit noted that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines but his corresponding level of care would be reduced to 124 hours per month (LOC "C" determination).
- 3) B.J. Sides, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, the Pre-Admission Screening assessment, as part of her medical assessment of the Claimant. Ms. Sides testified that the Claimant was awarded a total of 21 points during the evaluation. The Claimant was awarded points in the following areas of the PAS assessment:

Dyspnea – 1 point  
Paralysis – 1 point  
Mental Disorder – 1 point  
Other diagnosis – 1 point  
Vacating during an Emergency – 1 point  
Eating – 1 point

Bathing – 1 point  
Dressing – 1 point  
Grooming – 2 points  
Bladder Incontinence – 1 point  
Bowel Incontinence – 1 point  
Transferring – 2 points  
Walking – 2 points  
Wheeling – 2 points  
Communication – 2 points  
Medication Administration – 1 point

Ms. Sides testified that during the assessment the Claimant related issues concerning arthritis, dysphagia, pain and a diagnosis of a traumatic brain injury. Ms. Sides issued a facsimile transfer (Exhibit D-5) to the Claimant's physician for confirmation of the diagnosis of each medical condition. Ms. Sides testified that the Claimant's physician failed to provide the additional information from her request and without the confirmation of the reported diagnoses; she could not adjust her findings in the PAS assessment.

- 4) The Claimant's representative, ----- Case Manager [REDACTED] contends that additional points should have been awarded in the areas of pain, bladder incontinence, orientation, and dementia.

**Pain**----- testified that prior to the WVMI nurse's assessment; the Claimant had a pain pump removed from his back in April 2010. ----- stated that the Claimant continues to have an open wound in his back and there is a possibility that the pump may have to be reinserted, as he experiences consistent pain. Ms. Sides testified the homemaker indicated during the assessment that the Claimant complained of daily pain, uncomfortable muscle spasms, and muscle cramping. Ms. Sides testified that she questioned the Claimant if he has been prescribed any prescription pain medication but the Claimant reported his requests for pain medication have been denied since the removal of the pump. Ms. Sides stated that she requested information from the Claimant's physician concerning a diagnosis of pain since the Claimant did not have any prescribed pain medication (Exhibit D-5). Ms. Sides testified that the Claimant's physician did not respond to her request concerning a pain diagnosis therefore she could not award points for the diagnosis.

Testimony indicated that additional points may be awarded in the Medical Conditions and Symptoms portion of the PAS assessment when there is a corresponding physician diagnosis of the medical condition. The assessing nurse attempted to clarify the diagnosis in question with the Claimant's physician and received no reply to her request. The Claimant had not been prescribed any pain medication and the assessing nurse acted correctly based on information related during the assessment. Additional points cannot be awarded in the area of diagnosis of pain.

**Bladder Incontinence**----- stated that the Claimant is incontinent "all the time" and that she orders incontinence supplies for him on a monthly basis. ----- indicated that the frequency of the Claimant's incontinence episodes results in a severe depletion of his incontinence supplies. Ms. Sides testified that she is familiar with the Claimant's abilities as she has conducted prior evaluations of the Claimant. Ms. Sides indicated that the Claimant

reported loss of bladder control less than three times a week and was assessed as occasionally incontinent.

Testimony from the Claimant's representative indicated a consistent loss of bladder control for the Claimant. However information related during the assessment indicated loss of bladder less than three times a week. As the information reported to the assessing nurse did not indicate frequent bladder incontinence at the time of the assessment, the assessing nurse correctly assessed the contested area. Therefore, additional points cannot be awarded in the area of bladder incontinence.

**Orientation**----- purported that the Claimant suffers from a traumatic brain injury in which he experiences intermittent disorientation. ----- indicated that the Claimant has trouble recalling recent events and remembering who she is upon her monthly visits. Ms. Sides indicated in the PAS assessment that that the Claimant was oriented to person, place, and time and denied any episodes of disorientation. Ms. Sides testified that she attempted to obtain information from the Claimant's physician concerning the diagnosis of a traumatic brain injury and that the physician failed to respond to her request.

During the assessment the Claimant was oriented to person place of time. The Claimant denied any episodes of disorientation, therefore the assessing nurse acted correctly on information related during the assessment. As the reported information did not indicate the presence of any disorientation, the assessing nurse correctly assessed the contested area. Therefore, additional points cannot be awarded in the area of orientation.

**Dementia**----- reported that the Claimant suffers from dementia due to his traumatic brain injury. She indicated that the Claimant has difficulties recalling recent events and individuals. Ms. Sides documented in the assessment that the Claimant reported a diagnosis of a traumatic brain injury but received no response to her inquiry from the Claimant's physician regarding the presence of the medical condition.

Testimony indicated that the diagnosis of a traumatic brain injury would warrant the assessment of points under the dementia or related conditions of the PAS assessment. However the assessing nurse can only award points in this area based on a physician diagnosis. The assessing nurse attempted to obtain such diagnosis from the Claimant's physician and received no response to her inquiry. Therefore, additional points cannot be awarded in the dementia and related conditions portion of PAS; as such diagnosis of a traumatic brain injury was not verified by the attending physician.

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

#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

- 6) Aged/Disabled Home and Community Based Services Policy Manual 501.3.4 D documents in pertinent part:

In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Medicaid policy dictates 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 May 14, 2010, the Claimant was assessed a total of 21 points as part of his 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. Total points awarded to the Claimant stand at 21.
- 4) In accordance with existing policy, an individual with 21 points qualifies as a Level "C" LOC and is therefore eligible to receive 4 hours per day or 124 hours per month of homemaker services.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) 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 August 2010.**

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**Eric L. Phillips**  
**State Hearing Officer**