



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Joe Manchin III  
Governor

Patsy Hardy, FACHE, MSN, MBA  
Cabinet Secretary

February 18, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 6, 2009. Your hearing request was based on the Department of Health and Human Resources' reduction of homemaker hours under the Aged and Disabled Waiver 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.

The Aged and Disabled Waiver (ADW) Program is based on current policy and regulations. One of these regulations specifies that for the ADW Program, the number of homemaker service hours is determined based on the level of care. The level of care is determined by evaluating the Pre-Admission Screening (PAS) form and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units and hours, which is reviewed and approved by the West Virginia Medical Institute. (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2)

The information that was submitted at the hearing revealed that the Department was correct in its determination of your level of care and corresponding homemaker hours.

It is the decision of the State Hearing Officer to **uphold** the Department's proposed reduction of homemaker hours under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Kay Ikerd, BoSS  
Stephanie Schiefer, WVM

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-1708**

**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 February 18, 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. This fair hearing was convened on November 6, 2009 on a timely appeal, filed July 23, 2009.

It should be noted that benefits have been continued by the Department.

All persons offering testimony were placed under oath.

**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:**

-----, Claimant

-----, Claimant's witness

-----, Claimant's witness

Kay Ikerd, RN, Department Representative, Bureau of Senior Services

Stephanie Schiefer, RN, WVM

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its proposed reduction of the Claimant's homemaker hours under the Aged and Disabled Waiver Program.

**V. APPLICABLE POLICY:**

Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

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

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.1; §501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services, dated July 13, 2009
- D-3 Notice of Decision dated July 15, 2009

**VII. FINDINGS OF FACT:**

- 1) Claimant is an 85-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on July 13, 2009 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about July 15, 2009. The notice states, in pertinent part:

**You have been determined medically eligible to continue to receive in-home services** under the Aged and Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 124 hours per month.

- 3) Policy from the Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2, states, in pertinent part:

**501.3.2.1 LEVELS OF CARE CRITERIA**

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

<b>Section</b>	<b>Description of Points</b>
#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 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

**Total number of points possible is 44.**

All of the above levels of care criteria information also applies to Personal Options.

**503.2.1 LEVELS OF CARE SERVICE LIMITS**

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

- 4) As part of the July 13, 2009 reevaluation, a Pre-Admission Screening, or PAS (Exhibit D-2), was completed by the West Virginia Medical Institute (WVMI) RN. Stephanie Schiefer, the WVMI RN who completed the Claimant's assessment, awarded the Claimant 23 points. Eight points were awarded for medical conditions and symptoms, one for vacating, 13 for functional abilities in the home, and one for medication administration. The 23 points awarded correspond with a level of care 'C' and the 124 hours per month limit noted in the Department's decision letter (Exhibit D-3).
  
- 5) Areas of dispute noted on the Claimant's behalf included *walking* and *wheeling*. -----, the Claimant's daughter, testified that the Claimant must be supervised at all times while walking and that she fell twice recently and had to be hospitalized. She and ----- – also the Claimant's daughter – testified that the Claimant has alternated between use of a cane and use of a walker. Kay Ikerd, representative for the Department's Bureau of Senior Services, testified that as described, this would not be the hands-on, physical assistance required for an increase from level 2 to level 3 in the area of walking. She testified that either the use of a cane or a walker would qualify as walking with supervision or an assisted device, and would result in the level 2 assessment given by the WVMI nurse.
  
- 6) Ms. [REDACTED] testified that the Claimant should be a level 3 or 4 on *wheeling*, because her arms and hands will not allow her to wheel, especially outside. Ms. Ikerd testified that the Claimant was awarded a level 3 in the area of *wheeling*, and that, by policy, level 3 or 4 award the same number of points.

#### **VIII. CONCLUSION OF LAW:**

- 1) Policy dictates that an individual's level of care for the Aged and Disabled Waiver Program is determined by the number of points assessed on the PAS assessment tool. The Claimant received 23 points on her July 13, 2009 PAS, and was awarded a level of care 'C,' with a corresponding 124 monthly service hours. No additional points were revealed through evidence or testimony. Testimony provided confirmed the assessment findings of the PAS in the area of *walking*. The contested area of *wheeling* was already assessed at a level awarding the maximum points. The Department was correct in its determination of the level of care and corresponding homemaker hours for the Claimant.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's proposed reduction of homemaker hours under the Aged and Disabled 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 February, 2010.**

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**Todd Thornton**  
**State Hearing Officer**