



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

**Joe Manchin III**  
Governor

Board of Review  
P.O. Box 1736  
Romney, WV 26757

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

October 28, 2010

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 19, 2010. Your hearing request was based on your dissatisfaction of the amount of your homemaker Level of Care hours associated with your Aged and Disabled Waiver benefits.

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 West Virginia Medical Institute (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 remain at a level "B" Level of Care. As a result, you are eligible to receive 3 hours per day or 93 hours per month of homemaker services.

It is the decision of the State Hearing Officer to Uphold the Department's findings from the June 9, 2010 PAS assessment and that it correctly assessed the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver 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-1833**

**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 October 19, 2010 on a timely appeal, filed August 30, 2010.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver (ADW) program continue at the previous level of determination pending a decision from the State Hearing Officer.

**II. PROGRAM PURPOSE:**

The Aged and 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

-----, Claimant's representative and daughter

-----, Claimant's Attorney-In-Fact

Kay Ikerd, RN, Bureau of Senior Services (BoSS)

Jamie Morgan, 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 correctly assessed 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 June 9, 2010
- D-3 Notice of Decision dated June 14, 2010

**VII. FINDINGS OF FACT:**

- 1) On June 9, 2010, the Claimant was medically assessed to determine her continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver (ADW) Program.
- 2) On June 14, 2010, West Virginia Medical Institute issued Exhibit D-3, Notice of Decision to the Claimant. This documentation noted that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines and her corresponding level of care could not exceed ninety-three (93) hours per month (LOC "B" determination).
- 3) Jamie Morgan, 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. Morgan testified that the Claimant was awarded a total of sixteen (16) points during the evaluation. The Claimant was awarded points in the following areas of the PAS assessment:

- Angina Rest - 1 point
- Angina Exertion - 1 point
- Dyspnea - 1 point
- Diabetes - 1 point
- Mental disorder - 1 point
- Other (Hypertension) - 1 point
- Vacating during an emergency - 1 point
- Eating - 1 point
- Bathing - 1 point
- Dressing - 1 point
- Grooming - 1 point
- Transferring - 2 points

Walking – 1 point  
Orientation – 1 point  
Medication Administration – 1 point

- 3) -----, the Claimant’s representative and daughter, contends that additional points should have been awarded in the areas of eating, orientation, bowel and bladder incontinence, hearing, and communication.

**Eating** - ----- testified that her mother has difficulty feeding herself due to a shaking of the arms and hands. ----- stated that she assists with this daily function by feeding her mother. Ms. Jamie Morgan testified that the Claimant was assessed at a level two requiring physical assistance stating that the Claimant reported on the day of the assessment that she was, “not able to prepare meals due to tremors and weakness” and that she could feed herself and could obtain simple snacks. Ms. Morgan indicated that on the day of the assessment it was reported that the Claimant’s daughter only prepares her meals.

While the Claimant’s representative contends the Claimant suffers from shaking or tremors which limit her participation in the daily function of eating, neither the Claimant or her representative offered any statements during the assessment to support the Claimant’s inability to participate in the area of eating. Based on evidence, the assessing nurse correctly assessed the Claimant, on her ability to feed herself and obtain simple snacks; therefore, additional points cannot be awarded in the contested area.

**Orientation** - ----- indicated that her mother was previously diagnosed with dementia and that she suffers from confusion which may be associated with her bipolar disorder or a pre-Alzheimer condition. Ms. Morgan documented in the PAS assessment that the Claimant was oriented to person and place, but experienced episodes of confusion with her bipolar disorder. Ms. Morgan indicated that the Claimant was assessed at a level two for intermittent disorientation and that total disorientation is needed to award a level three and the maximum number of points.

While the Claimant indicated intermittent disorientation at the time of the assessment, there was no indication to suggest that the Claimant was totally disoriented to person, place, and time. Based on the evidence presented, the assessing nurse correctly assessed the Claimant as intermittently disoriented and additional points cannot be awarded in the contested area.

**Bladder and Bowel Incontinence** - ----- indicated that her mother suffers from bladder infections which require medical attention on a weekly basis. ----- stated that her mother recently experienced bowel incontinence in which she has accidents on the floor or bed. Ms. Morgan indicated that during the assessment, the Claimant denied any loss of bowel or bladder control. Ms. Morgan noted that she did not observe any incontinence supplies being utilized by the Claimant.

The Claimant’s representative contends that her mother has experienced recent incontinence episodes and those present on the day of the assessment denied any loss of bowel or bladder control for the Claimant. The purpose of hearing is to examine the Claimant’s functional abilities at the time of assessment, any current condition cannot be considered because such conditions would not have been present at the time of the assessment. Based on evidence, the

assessing nurse correctly assessed the Claimant as continent on the day of the assessment and additional points cannot be awarded in the contested area.

**Hearing** - ----- indicated that her mother suffers from a sixty percent (60%) loss of hearing. Ms. Morgan documented in the PAS assessment that the Claimant was hard of hearing and elevated tones of voice were need to communicate with the member.

While the Claimant possesses impairment to her hearing abilities, the impairment is correctable by using an elevated tone of voice; therefore, the assessing nurse correctly assessed the Claimant's hearing as impaired/correctable and additional points cannot be awarded in the contested area.

**Communication** - ----- indicated that her mother has communication issues associated with her mental disorder which makes it difficult for others to understand information the Claimant is trying to relate. Ms. Ikerd testified that the communication area of the PAS assessment evaluates the individual's ability to speak. Ms. Morgan indicated that the Claimant communicated openly at the assessment.

While the Claimant may possess communication issues due to her mental disorders, the Claimant was able to speak and communicate with the nurse at the assessment. Based on the evidence, the assessing nurse correctly assessed the Claimant with no impairment to communication and additional points cannot be awarded in the contested area.

4) 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

### **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 June 9, 2010, the Claimant was assessed a total of sixteen (16) points as part of her PAS assessment completed by the 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 sixteen (16).
- 4) In accordance with existing policy, an individual with sixteen (16) points qualifies as a Level "B" LOC and is therefore eligible to receive 3 hours per day or 93 hours per month of homemaker services.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the agency's findings from the June 9, 2010 PAS assessment and that it correctly assessed 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 October 2010.**

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**Eric L. Phillips**

**State Hearing Officer**