



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

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

**Earl Ray Tomblin**  
**Governor**

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

November 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 9, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny your request for an increase in your Aged and Disabled Waiver Level of Care homemaker service hours.

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 you failed to meet the requirements for an increase in your Level of Care; therefore, the Department was correct to deny your request.

It is the decision of the State Hearing Officer to Uphold the action of the Department to deny your request for an increase in Level of Care hours.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Kay Ikerd, BoSS  
Caroline Ostand, ADW Review Nurse

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

-----,

**Claimant,**

v.

**Action Number: 10-BOR-1974**

**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 November 9, 2010 on a timely appeal, filed September 8, 2010.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver Program (ADW) 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:**

-----, Claimant  
-----, Claimant's Homemaker Aide Panhandle Support Services  
Kay Ikerd, RN, Bureau of Senior Services  
Caroline Ostand, Aged Disabled Waiver Review Nurse

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 decision to deny the Claimant's request for an increase in Aged and Disabled Waiver Level of Care homemaker service hours.

**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 Notice of Decision dated August 31, 2010

D-3 Hearing Request dated September 8, 2010

**VII. FINDINGS OF FACT:**

- 1) On August 31, 2010, the Department issued Exhibit D-2, Notice of Decision, in response to the Claimant's request for an increase in his Level of Care, hereinafter LOC, homemaker service hours under the Medicaid Aged and Disabled Waiver Program. This document states in pertinent part:

A request for a change in your level of care under the Medicaid Aged and Disabled Waiver Code 501.1 has been denied for LOC D [sic] Documentation received gave insufficient data to validate a change. Services may continue under your previous plan. This decision is based on Medicaid Aged and Disabled Waiver Policy and Procedures Manual, Chapter 501, section [sic] 501.3.1 and 501.3.2.2

- 2) Caroline Ostand, ADW Review Nurse, evaluated the Claimant's request for a LOC increase and provided testimony regarding her findings. Ms. Ostand testified that the Claimant's December 2009 Pre-Admission Screening, hereinafter PAS, assessment completed by the West Virginia Medical Institute awarded 19 points to the Claimant based on his functional abilities and medical conditions. Ms. Ostand indicated that the points awarded from the previous PAS assessment qualified the Claimant for a Level "C" LOC or 124 monthly homemaker service hours under program guidelines.

Ms. Ostand testified that on August 24, 2010, the Claimant submitted a request for an increase in LOC hours along with corresponding medical documentation. The Claimant requested that his hours be increased to a Level "D" LOC or 155 monthly homemaker service hours. Ms.

Ostand reviewed the submitted medical information to determine an increase in LOC homemaker service hours. Ms. Ostand stated that her review awarded the Claimant 21 total points, a two point increase from his previous PAS assessment. Ms. Ostand indicated that 21 total points equated to a Level "C" LOC and 124 monthly homemaker service hours under program guidelines.

- 3) The Claimant acknowledged that he may have overstated his abilities at his December 2009 PAS assessment. The Claimant's homemaker aide provided testimony concerning the Claimant's abilities in the areas of walking, grooming, and bathing and indicated the Claimant's need for a new PAS assessment. Kay Ikerd, RN Bureau of Senior Services testified that the Review Nurse considers medical conditions provided in the submitted physician's documentation when determining an LOC increase. Ms. Ikerd indicated that the prior PAS assessment is irrelevant in the consideration of such increase. Additionally, testimony indicated that the Claimant's initial PAS assessment will expire and a new assessment will be conducted in December 2010.
- 4) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2 documents:

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) The Claimant was awarded a total of 19 points as part of his PAS assessment completed by the West Virginia Medical Institute. An individual with 19 points qualifies as a Level "C" LOC and is eligible to receive 4 hours or 124 hours per month of homemaker services.
- 3) The Claimant requested an increase of homemaker service hours to a Level "D" LOC and submitted appropriate documentation. The Claimant was awarded a total of 21 points as part of his LOC increase request. An individual with 21 points qualifies as a Level "C" LOC and is eligible to receive 4 hours or 124 hours per month of homemaker services.
- 4) As a result of evidence and testimony presented during the hearing process, no additional medical information was provided to warrant an increase to the Claimant's LOC; therefore, the Claimant remains eligible for a Level "C" LOC and the Department was correct in its decision to deny the Claimant's request for a LOC increase.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the action of the Department to deny the Claimant's request for a LOC increase.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of November 2010.**

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**Eric L. Phillips  
State Hearing Officer**