



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

Joe Manchin III  
Governor

Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

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

February 1, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 20, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours from Level D care to Level C.

In arriving at a decision, the State Hearings 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 WVMI (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.3).

The information submitted at your hearing revealed that you continue to meet the medical criteria to remain at a Level D care.

It is the decision of the State Hearings Officer to **Reverse** the proposal of the Department to reduce your homemaker hours from Level D care to Level C.

Sincerely,

Kristi Logan  
State Hearings 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: 09-BOR-2091**

**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 January 20, 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 January 20, 2010 on a timely appeal, filed October 16, 2009.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have continued pending a 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:**

-----, Attorney in Fact/Witness for Claimant

Kay Ikerd, RN, Bureau of Senior Services  
Karen Keaton, 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 Form dated October 1, 2009
- D-3 Notice of Decision dated October 6, 2009

**Claimants' Exhibits:**

- C-1 Correspondence from [REDACTED] DO dated October 23, 2009

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for the ADW program on October 1, 2009. A Pre-Admission Screening Form (PAS) was completed that date by Karen Keaton, RN of the West Virginia Medical Institute (WVMI) (D-2).

Claimant received a total of 25 points on the PAS and her homemaker hours were reduced to 124 hours a month, or Level C care (D-2 and D-3).

- 2) Claimant's attorney in fact and daughter, ----, testified that she was contesting Claimant not receiving points for a terminal prognosis, asthma and a Level 4 for transferring.

---- stated Claimant has been receiving Hospice care since December 2008 for renal failure. Claimant has been previously diagnosed with asthma but has not needed prescription medication for the past year. ---- stated they now need two (2) people to transfer her mother with the Hoyer lift.

----- presented a letter from Claimant's physician, [REDACTED] DO dated October 23, 2009 stating Claimant was terminally ill and under Hospice care (C-1).

- 3) Karen Keaton, RN with WVMI, testified to the PAS she completed on Claimant. Ms. Keaton stated she was aware at the time of the assessment that Claimant was under Hospice care. Her physician, however, failed to indicate Claimant as being terminal on the Medical Necessity Evaluation Request form. Ms. Keaton stated she called Dr. Cole three (3) times for a prognosis of terminal illness but never received a call back.
- 4) 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.

The Claimant was awarded 25 points as the result of a PAS completed by WVMI in October 2009.

- 2) Claimant's physician established her condition as terminal as indicated by his letter dated October 23, 2009. While the prognosis was not provided to the WVMI nurse at the time of the assessment, testimony and documentation presented revealed that not only has Claimant been under Hospice care for a year, this information was made known to the nurse at the assessment. Claimant will be awarded one (1) additional point for a terminal prognosis.
- 3) Claimant continues to meet the medical criteria required for services under Level D care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce Claimant's homemaker hours from Level D care to Level C. Claimant will be awarded an additional point for a terminal prognosis.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 1<sup>st</sup> day of February 2010.**

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**Kristi Logan  
State Hearing Officer**