



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

May 20, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 20, 2010. Your hearing request was based on the Department of Health and Human Resources' determination 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. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2)

The information 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 determination 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  
Melissa Bell, WVMII  
[REDACTED]

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

-----,

**Claimant,**

v.

**Action Number: 10-BOR-953**

**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 May 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 May 20, 2010 on a timely appeal, filed March 8, 2010.

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, Bureau for Senior Services

Melissa Bell, RN, West Virginia Medical Institute

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 determination of the Claimant's homemaker hours under the Aged and Disabled Waiver Program.

**V. APPLICABLE POLICY:**

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

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

**Department's Exhibits:**

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.2.1 - 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services, dated February 18, 2010
- D-3 Notice of Decision, dated March 3, 2010

**VII. FINDINGS OF FACT:**

- 1) Claimant is a 77-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on February 18, 2010 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about March 3, 2010. 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 93 hours per month.

- 3) Policy from 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.

**503.2.2 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) On the February 18, 2010, Pre-Admission Screening, or PAS (Exhibit D-2), Melissa Bell – the West Virginia Medical Institute (WVMI) RN – assessed 17 points for the Claimant. Six points were awarded for medical conditions and symptoms, one for vacating, eight for functional abilities in the home, one for medication administration, and one for a diagnosis of dementia. Ms. Bell testified that the Claimant’s physician confirmed the Claimant’s diagnosis of dementia by fax after the assessment.
- 5) The Claimant testified that the areas in dispute – where she asserts points should have been awarded – are *continence of bladder*, *continence of bowel*, *eating*, and *walking*. It should be noted that the Claimant mentioned the area of *pain*, but the Department confirmed that this area has already been awarded. ----- and -----, the Claimant’s Homemaker RN and Case Manager, respectively, testified that they had no areas to add to the Claimant’s asserted areas of dispute.
- 6) The Claimant testified that she has had accidents – with regard to *continence of bowel* and *continence of bladder* – more frequently since a recent change in medication. She testified that this medication change was approximately a month ago, after the time of the PAS.
- 7) The Claimant testified that she is unable to cook for herself. Ms. Ikerd testified that the ability to cook is not an element of the area of *eating*.
- 8) The Claimant testified that she has problems with *walking*. Ms. Bell testified that the Claimant was witnessed using a walker on the day of the assessment, and was assessed as requiring an assistive device. The Claimant testified that she does use a walker, although slowly.

#### **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 17 points on her February 18, 2010, PAS, and was awarded a Level of Care ‘B,’ with a corresponding 93 monthly service hours. No additional points were revealed through evidence or testimony. The testimony offered regarding the two areas of continence did not pertain to the Claimant’s condition at the time of the assessment. The testimony regarding eating dealt with the ability to prepare meals, not eating itself. The testimony regarding walking confirmed the Department’s assessed finding in that area. 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 determination 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 May, 2010.**

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