



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

April 15, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1173

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision  
Form IG-BR-29

cc: Bureau of Senior Services  
Allied Nursing and Community Services

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

██████████,

**Claimant,**

v.

**Action Number: 15-BOR-1173**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**INTRODUCTION**

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on April 9, 2015, on an appeal filed December 22, 2014.

The matter before the Hearing Officer arises from the December 18, 2014, decision by the Respondent to reduce the Claimant's homemaker hours under the Aged/Disabled Waiver program from a Level C to a Level B.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, RN with the West Virginia Medical Institute. The Claimant appeared *pro se*. Appearing as witnesses for the Claimant were ██████████ Case Manager and ██████████, Homemaker RN. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 WV Medicaid Provider Manual Chapter 501 - Aged/Disabled Waiver Services Policy, §§501.5.1 and 501.5.1.1
- D-2 Pre-Admission Screening (PAS) dated December 17, 2014
- D-3 PAS Summary dated December 17, 2014
- D-4 Medical Necessity Evaluation Request form dated October 7, 2014
- D-5 PAS dated December 16, 2013
- D-6 Notice of Decision - Re-Evaluation Assessment dated December 18, 2014

**Claimant's Exhibits:**

C-1 PAS dated February 27, 2012

C-2 PAS dated January 10, 2013

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

**FINDINGS OF FACT**

- 1) On December 17, 2014, the Claimant was evaluated to determine continued medical eligibility for the Aged and Disabled Waiver program. West Virginia Medical Institute (WVMI) Nurse [REDACTED] completed a Pre-Admission Screening (PAS) (D-2) form with the Claimant to assess his functional abilities in the home. Nurse [REDACTED] assessed the Claimant with fifteen (15) level-of-care points based on the information derived from the medical evaluation.
- 2) On December 18, 2014, the Respondent issued notice (D-6) to the Claimant of its decision to reduce his homemaker hours from Level C to Level B as a result of the assessment by Nurse [REDACTED]. Eighteen (18) points (D-1) are required for the Claimant to continue receiving services at a Level C care.
- 3) The Department stipulated that the Claimant should have received one (1) point each for the medical conditions of pain and mental disorder.
- 4) The Claimant testified that he experiences bowel incontinence 2-3 times weekly.
- 5) Nurse [REDACTED] documented (D-2) that the Claimant reported that he had not had a bowel accident for at least 2-3 weeks prior to the December 2014 medical assessment.

**APPLICABLE POLICY**

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.5.1.1(a) and 501.5.1.1(b) (D-1) set forth the Service Level criteria. There are four (4) Service Levels for Personal Assistance/Homemaker services, and points are 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
- #35 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 - 0-62 hours per month

Level B - 10 points to 17 points - 63-93 hours per month

Level C - 18 points to 25 points - 94-124 hours per month

Level D - 26 points to 44 points - 125-155 hours per month

### **DISCUSSION**

The Claimant was assessed as a Level 2 – occasional incontinence – in the area of bowel incontinence based on his disclosure to the WVMJ nurse that he had not experienced a bowel accident in recent weeks. To be assessed as a Level 3 – total incontinence – the Claimant would have to have three (3) or more bowel accidents weekly. Based on the information that was made known to the WVMJ nurse at the time of the Claimant's medical evaluation, he was correctly assessed as a Level 2 for bowel incontinence.

### **CONCLUSIONS OF LAW**

Whereas the Claimant received seventeen (17) points on his December 2014 PAS, and a minimum of eighteen (18) points are required to receive a Level C care, the Claimant was correctly assessed at a Level B care.

**DECISION**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to reduce the Claimant's homemaker hours under the Aged/Disabled Waiver program to a Level B care.

**ENTERED this 15<sup>th</sup> day of April 2015**

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**Kristi Logan  
State Hearing Officer**