



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, WV 25313

Joe Manchin III  
Governor

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

January 20, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 14, 2010. Your hearing request was based on the Department of Health and Human Resources' reduction of your homemaker service hours in the Aged/Disabled Waiver Program due to a level of care determination.

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/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state that for the Aged/Disabled Waiver Program individuals are evaluated by utilizing the Pre-Admission Screening (PAS) tool to assess their functioning abilities in the home. Points are assigned by the nurse based on the information derived from the PAS assessment interview, and the level of care is divided into four categories of assistance. The individual's level of care is determined based on the points assessed during the completion of the PAS. (Aged and Disabled Waiver Manual Section 501)

The information provided during your hearing shows that you continue to meet the medical requirements for Level of Care (C) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to reduce your level of care under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI



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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-1962**

**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 January 14, 2010 on a timely appeal filed September 28, 2009.

**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, representing herself  
-----, Claimant's witness  
-----, Claimant's witness

Cathie Zuspan, Bureau of Senior Services, representing Department  
Isabel Bukac, RN, WVMI, Department's witness

It should be noted that the Department participated by conference call.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its proposal to reduce the Claimant's Level of Care benefits under the Aged/Disabled Home and Community-Based Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 501

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501, two (2) pages
- D-2 Pre-Admission Screening (PAS) assessment completed September 17, 2009, seven (7) pages
- D-3 Notice of Decision dated September 21, 2009
- D-4 Request for hearing dated September 23, 2009

**Claimant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) The Claimant was undergoing an annual re-evaluation for the Title XIX Aged and Disabled Waiver Program during the month of September 2009.
- 2) A West Virginia Medical Institute (WVMI) registered nurse, Isabel Bukac, completed the Claimant's medical assessment on September 17, 2009 and determined that she continues to meet the medical requirements for the program; however, she was assessed at Level of Care (B) rather than Level (C). The Claimant received sixteen (16) points during the PAS assessment, which places her in Level (B) care. For Level of Care (C) the Claimant would need at least eighteen (18) points.
- 3) The Claimant contends that additional points should be awarded in the areas of diabetes, arthritis, and orientation. Each area is addressed below:

**Diabetes** - which is evaluated under "Medical Conditions/Symptoms" on the PAS. The Claimant was not assessed a point in this area. The WVMI nurse recorded the following on the PAS:

NO DX. RX. FOR INSULIN. THE MEMBER CONFIRMS IDDM.

The Department, during the hearing, conceded to allow an additional one (1) point for Diabetes. The condition is clearly documented throughout the PAS.

**Arthritis** – which is evaluated under “Medical Conditions/Symptoms” on the PAS. The Claimant was not assessed a point in this area. The WVMI nurse recorded the following on the PAS:

NO DX. NO RX. THE MEMBER HAS HAD BIL. KNEE REPLACEMENTS, AND LEFT HIP REPLACEMENTS, AND SAYS SHE NO LONGER HAS ARTHRITIS.

The Claimant testified that her statement to the WVMI nurse that she no longer has arthritis was in regard to the knee and hip area. She testified that although she no longer has arthritis in the knee and hip due to the replacements, she still has arthritis in her shoulder which was not addressed during the PAS evaluation. She stated she takes Tylenol for the pain.

**Orientation** - which is evaluated under “Functional Levels” on the PAS. The Claimant was not assessed a point in this area. The WVMI nurse recorded the following on the PAS:

THE MEMBER IS ORIENTED TO DAY, MONTH, YEAR, STATE, CITY AND SITUATION [SIC]. SHE HAS A DX OF DEMENTIA AND SAYS THE EXELON HAS MADE A BIG DIFFERENCE IN HER COGNITIVE ABILITIES.

The Claimant’s daughter, ----, stated that although the medicine has improved her cognitive abilities she still has days when she is disoriented. She added that she calls her mother every day and that sometimes she does not know who she is – even with the medication. She has short term memory loss, and she will see animals crawling that are not there. Ms. Bukac testified that she would have had to witness the problems on the day of the PAS evaluation in order to assess a point for orientation. She also added that she did not ask the Claimant about her normal cognitive state or if there were days when she did have issues with orientation. Ms. Bukac also stated that she would concede that this area could be argued for the Claimant. The Claimant’s Case Manager, ----, stated that the Claimant is on medication for dementia.

4) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1) – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

Applicants for the ADW Program must meet the following criteria to be eligible for the program:

C. Be approved as medically eligible for NF Level of Care.

5) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 states in pertinent part:

Purpose: The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
- B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 (D-1) LEVELS OF CARE CRITERIA states in pertinent part:

There are four levels of care for homemaker services. Points will be determined as follows, 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 given for j.

Wheeling

#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

7) Aged/Disabled Home and Community Based Services Waiver Policy Manual 501.3.2.2 LEVELS OF CARE SERVICE LIMITS states:

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

The total number of hours may be used flexibly within the month, but must be justified and documented on the POC. Example: If the POC shows 4 hours/day, Monday-Thursday and 5 hours on Friday, the additional hour on Friday must be justified on the POC.

**VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that there are four levels of care for homemaker services. Points are determined based on the individual's medical condition and functional abilities at the time the PAS is completed. Points are assigned accordingly.
- 2) The Claimant was assessed at Level of Care (B) during her September 17, 2009 assessment, having received sixteen (16) points. To be assessed at Level of Care (C) the Claimant must be assigned at least eighteen (18) points during the assessment.
- 3) The testimony and evidence provided during this hearing support that the Claimant has diabetes, and one (1) point is awarded as a result. The evidence also supports that the Claimant has intermittent disorientation, and therefore one (1) point is awarded for this condition. The Department conceded to allow a point for diabetes during the hearing. Further, the Claimant's diagnosis of dementia, in addition to testimony from the Claimant and her daughter, support that she has intermittent disorientation.
- 4) The additional two (2) points awarded during the hearing, when added to the Claimant's already awarded sixteen (16) points, bring the Claimant's total awarded points to eighteen (18), which supports Level of Care (C). The Department was not correct in its decision to reduce the Claimant's Level of Care from Level (C) to Level (B).

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to reduce the Claimant's Level of Care from Level (C) to Level (B).

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 20th Day of January, 2010**

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**Cheryl Henson  
State Hearing Officer**