



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 7, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 28, 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  
Paula Clark, WVMI

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

-----,

**Claimant,**

v.

**Action Number: 10-BOR-802**

**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 7, 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 April 28, 2010 on a timely appeal, filed February 9, 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

-----, RN, Claimant's witness

Cathie Zusan, RN, Department Representative

Paula Clark, 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 January 25, 2010
- D-3 Notice of Decision, dated February 2, 2010

**VII. FINDINGS OF FACT:**

- 1) Claimant is a 59-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on January 25, 2010 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about February 2, 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 124 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 January 25, 2010, Pre-Admission Screening, or PAS (Exhibit D-2), Paula Clark – the West Virginia Medical Institute (WVMI) RN – assessed 24 points for the Claimant. Seven points were awarded for medical conditions and symptoms, one for vacating, 15 for functional abilities in the home, and one for medication administration. Ms. Clark testified that she sent a fax to the Claimant’s physician, in an attempt to verify diagnoses of arthritis and dysphagia, but did not receive a response and could not credit points for those medical conditions.
- 5) The Claimant and -----, RN, the Claimant’s Case Manager, testified that the areas in dispute – where they assert points should have been awarded – are *eating, bathing, and continence of bowel*.
- 6) ----- testified that, in the past, he had assessed the Claimant as total care for *bathing*. He did not testify as to the time of the past assessments. Ms. Clark testified that when she assessed the Claimant as requiring physical assistance in *bathing*, it was based on the statement of the Claimant’s daughter that the Claimant can participate to help wash her private areas. The Claimant stated that her daughter stated this during the assessment because she was embarrassed. The Claimant’s daughter was not present for this hearing, and the Claimant did not participate in the assessment. Ms. Clark testified that she could only base her decision on what she was told on the day of the assessment, and that because it was reported that the Claimant could participate in some way, she was not assessed as requiring total care for *bathing*.
- 7) The Claimant testified that she has numbness in her hands and back problems, affecting her functional ability in the area of *eating*. Ms. Clark testified that she noted in her assessment of the Claimant, with regard to *eating*, that she can feed herself, but cannot cut up her food because of neuropathy in her hands, and that the Claimant’s daughter had to feed her five times in the month prior to the assessment.
- 8) The Claimant testified that she was incontinent of bowel every other day at the time of the assessment. Ms. Clark testified that she assessed the Claimant as continent of bowel, based on the statements at the time from the Claimant’s daughter that the Claimant uses a bedside commode and has never had an accident of bowel continence.

### 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 24 points on her January 25, 2010, PAS, and was awarded a Level of Care ‘C,’ with a corresponding 124 monthly service hours. No additional points were revealed through evidence or testimony. The WVMI nurse completed an assessment with the Claimant’s daughter, who gave statements that the Claimant can assist with bathing, that the Claimant only required feeding five times in the month prior to assessment, and that the Claimant has never had an accident of bowel continence. In each category, there was no convincing reason given to doubt the veracity of the statements of the Claimant’s daughter at the time of the assessment. 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**