



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

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

July 19, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 12, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours from Level C to Level B care.

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 WVMH (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 required for Level C care. One (1) additional point is awarded for orientation, reinstating your hours to Level C.

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

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau of Senior Services  
West Virginia Medical Institute  
[REDACTED]

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

**IN RE:   -----,**

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1135**

**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 July 12, 2011 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 a timely appeal, filed April 28, 2011.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have continued under Level C care pending a decision.

**II.   PROGRAM PURPOSE:**

The program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health and 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:**

-----, Claimant

-----, Claimant's Attorney in Fact

-----, Homemaker,

-----, Homemaker RN,

-----, Case Manager,

Kay Ikerd, RN, Bureau of Senior Services  
Brenda Myers, 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 dated April 11, 2011
- D-3 Notice of Decision dated April 18, 2011

#### **VII. FINDINGS OF FACT:**

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on April 11, 2011. A Pre-Admission Screening Form (PAS) was completed that date by Brenda Myers, RN with the West Virginia Medical Institute (WVMI).

Claimant received a total of 17 points on the April 2011 PAS, reducing her level of care from Level C to Level B (D-2).

- 2) Claimant's daughter and attorney in fact, -----, stated she did not agree with her mother not receiving a level 2 in orientation, a level 3 in hearing and a level 2 for communication.

----- stated her mother has difficulty hearing even with the use of her hearing aids. ----- stated she must constantly repeat herself when speaking with her mother which also makes communication with her problematic. ----- stated Claimant will pretend she heard and understand something when she does not.

----- testified that her mother has bouts of disorientation, not recognizing family members and asking questions she should know the answers to. ----- stated Claimant can be confused as to what day it is.

- 3) -----, Claimant's case manager, testified Claimant is often confused and cannot remember to take her medications. ----- stated Claimant will ask the same questions over and over again and should have been rated intermittent disorientation due to her diagnosis of dementia.

----- argued that Claimant's hearing is not correctable, as was indicated on the PAS. Claimant continues to be hard of hearing even with the use of her hearing aids. ----- stated Claimant's hearing impairment and dementia causes problems in communicating with her.

- 4) Brenda Myers, RN with WVMi testified to the assessment she completed in April 2011 with Claimant. Ms. Myers stated Claimant participated in the assessment and answered her questions appropriately. Ms. Myers admitted to having to repeat herself to Claimant during the assessment but documented in the PAS that Claimant chose to only wear one (1) hearing aid at a time. Ms. Myers stated Claimant was rated a level 2 in hearing, impaired/correctable because Claimant still retained some ability to hear with her hearing aids and because of this, was able to function in the home.

Ms. Myers stated Claimant was oriented to person, place and time at the assessment and she observed no disorientation. Ms. Myers documented that Claimant's daughter denied Claimant experiencing disorientation to person, place or time when questioned about Claimant's orientation. Ms. Myers stated ----- advised her of memory problems for Claimant. Ms. Myers pointed out that memory loss and loss of cognitive abilities are separate issues and because there were no reports of disorientation, Claimant was rated a level 1.

Ms. Myers stated Claimant carried on a conversation with her, and answered some of her questions during the assessment. Claimant had no problems with her speech and was easily understood.

- 5) Aged/Disabled Home and Community Based Waiver Manual § 501.3.2.1 and 501.3.2.2 states:

#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. Claimant was awarded 17 points as the result of a PAS completed by WVMi in April 2011 in conjunction with her annual medical evaluation.
- 2) Claimant has some hearing ability with the use of hearing aids. Claimant was able to communicate verbally and answer questions asked of her verbally. In order to receiving a level 3 in hearing, impaired/uncorrectable, Claimant would have to be unable to hear at all with the use of corrective hearing aids. Claimant exhibited no speech problems and was easily understood. No additional points can be awarded in communication or hearing.
- 3) Claimant has a diagnosis of dementia and takes prescription medication for the condition. Although Claimant was evaluated as oriented during the assessment, testimony indicated Claimant does experience confusion and an impairment of cognitive ability. Although the WVMi nurse assessed Claimant has oriented based on the information provided the day of the assessment, a diagnosis of dementia indicates Claimant would experience some disorientation and this issue should have been explored further. Based on the medical diagnosis and the testimony provided, Claimant will be awarded one (1) additional point for orientation and the rating changed to level 2.

### **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 C to Level B. Claimant will be given one (1) additional point in orientation and reinstated to Level C care.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 19<sup>th</sup> day of July 2011.**

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**Kristi Logan**  
**State Hearing Officer**