



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

Earl Ray Tomblin  
Governor

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

August 31, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 31, 2011. Your hearing request was based on the Department of Health and Human Resources' reduction of homemaker hours under the Aged and Disabled Waiver Program, based on 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.

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. For an individual to be awarded the level of care designated as level 'C,' a minimum of 18 points must be determined from the PAS. (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, WVMI

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

**IN RE:**        -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1399**

**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 August 31, 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 August 31, 2011 on a timely appeal, filed June 6, 2011.

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

Sara Birckhead, Department representative

Melissa Bell, Department witness

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 May 19, 2011
- D-3 Notice of Decision, dated May 25, 2011

**VII. FINDINGS OF FACT:**

- 1) Claimant is a 50-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on May 19, 2011 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about May 25, 2011. The notice states, in pertinent part:

**You have been determined medically eligible to continue to receive Waiver services.**

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 May 19, 2011, Pre-Admission Screening, or PAS (Exhibit D-2), Melissa Bell – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – assessed 16 points for the Claimant. Six points were awarded for medical conditions and symptoms, one for vacating, seven for functional abilities in the home, one for continuous oxygen, and one for medication administration. This point level

corresponds to the level of care “B,” and the service limit of 93 hours monthly noted on the decision (Exhibit D-3) issued to the Claimant.

- 5) The Claimant disputed two areas: *walking* and *transferring*.
- 6) The Claimant and her case manager, -----, testified that the Claimant walks on her own for short distances, and needs someone to help her walk longer distances in the home. She testified that she requires homemaker help with wheeling in her home.
- 7) The Claimant was assessed as requiring supervision or an assistive device in the area of *walking*. Ms. Bell’s PAS comments on this area are as follows:

WALKING: Member became very short of breath with ambulation, member ambulated using a rollator walker and oxygen. Gait was steady
- 8) The Claimant was assessed as wheeling independently in the area of *wheeling*. Ms. Bell’s PAS comments in this area are as follows:

WHEELING: Member has a wheelchair, member states she uses wheelchair in the home
- 9) Ms. Bell testified that the Claimant, her homemaker, and her case manager were present for the May 19, 2011 PAS assessment. She testified that she reviewed the PAS at the conclusion of her assessment, with all persons present, and that there was no dispute of her findings at the time.

#### **VIII. CONCLUSIONS 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 16 points on her May 19, 2011, PAS, and was awarded a level of care ‘B.’ To be awarded a level of care ‘C,’ a minimum of 18 points is required. Testimony on the Claimant’s behalf in the disputed areas of *walking* and *wheeling* is unconvincing considering both the Claimant and her case manager were present at the assessment and offered no dispute of the same findings at that time. No error in assessment was revealed through evidence or testimony. The functional areas of *walking* and *wheeling* were assessed correctly by the Department.

- 2) With no additional points revealed through evidence or testimony, the Department's determination of the Claimant's level of care and homemaker hours for the Aged and Disabled Waiver Program is correct.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's determination of level of care and 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 August, 2011.**

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**Todd Thornton  
State Hearing Officer**