



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General**

Board of Review

P.O. Box 1736
Romney, WV 26757

**Earl Ray Tomblin
Governor**

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

August 24, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 16, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services 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.

Eligibility for the Aged and Disabled Waiver program is based on current policy and regulations. These regulations provide that the number of homemaker service hours are 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 are reviewed and approved by WVMi (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.3).

The information which was submitted at your hearing revealed that while you remain medically eligible for participation in the Aged and Disabled Waiver program, your Level of Care should not be reduced from a level "D" to a level "C" Level of Care. As a result, you are eligible to receive 5 hours per day or 155 hours per month of homemaker services.

It is the decision of the State Hearing Officer to Reverse the proposal of the Department to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, Bureau of Senior Services
[REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1407

**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 a timely appeal, filed May 24, 2011.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program, hereinafter ADW, 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

-----, Case Manager, [REDACTED]

Cecilia Brown, Quality Assurance Manager, Bureau of Senior Services (BoSS)

Lee Ann Beihl, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to reduce the Claimant's homemaker service hours provided through the Medicaid Aged and Disabled Waiver program.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and Chapter 501.3.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and Chapter 501.3.2.2
- D-2 Pre-Admission Screening Assessment form dated May 6, 2011
- D-3 Notice of Decision dated May 16, 2011
- D-4 Letter from [REDACTED] M.D. dated June 10, 2011

VII. FINDINGS OF FACT:

- 1) On May 6, 2011, the Claimant was medically assessed to determine his continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver program. Prior to the re-evaluation, the Claimant was assessed at a Level "D" LOC under the program guidelines.
- 2) On May 16, 2011, the Claimant was issued a Notice of Decision, Exhibit D-3. This exhibit noted that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines, but his corresponding level of care would be reduced to 124 hours per month (LOC "C" determination).
- 3) Ms. Lee Ann Beihl, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, the Pre-Admission Screening assessment, hereinafter PAS, as part of her medical assessment of the Claimant. Ms. Beihl testified that the Claimant was awarded a total of 25 points during the evaluation, which qualifies for a Level "C" LOC.
- 4) The Claimant and his representative contended that an additional point should have been awarded in the area of bathing. The Claimant indicated that his circumstances have not changed since his previous assessment and was unclear as to why his hours were reduced. Because the prior year evaluation is neither considered nor available to assessing nurse at the time of the assessment, this information was not available or relevant to the current evaluation.

-----, Case Manager, [REDACTED] indicated that the Claimant should have been assessed as total care under the bathing section of the PAS assessment. ----- stated that the Claimant is administered a bed bath by the homemaker aide on a consistent basis. ----- purported that the Claimant's atrial fibrillation and continuous oxygen prohibit the Claimant from enduring the function of bathing. Ms. Beihl documented in the PAS assessment the following regarding the Claimant's bathing abilities, "He requires assistance to transfer on/off shower bench; usually has bed bath; he is able to wash his face and private areas only with increased dyspnea; requires bathing assistance for remainder of bath."

Testimony revealed that the Claimant is unable to endure bathing and requires a consistent bed bath and assistance transferring on and off a shower bench. Credible testimony reveals that the Claimant requires total care in the functional area of bathing; therefore, an additional point can be awarded to the assessment of his level of care.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2: There will be four levels of care for clients of ADW homemaker services. Points will be 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- 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) Medicaid policy dictates that an individual's Level of Care (LOC) is determined by the number of points awarded on the Pre-Admission Screening (PAS) assessment tool.
- 2) On May 6, 2011, the Claimant was assessed a total of 25 points as part of her PAS assessment completed by West Virginia Medical Institute.
- 3) As a result of evidence and testimony presented during the hearing process, one additional point may be awarded. The Claimant's total points for the assessment are 26.
- 4) In accordance with existing policy, an individual with 26 points qualifies as a Level "D" LOC and is therefore eligible to receive 5 hours per day or 155 hours per month of homemaker services.

IX. DECISION:

It is the decision of the State Hearing Officer to reverse the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) 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.

Eric L. Phillips
State Hearing Officer