



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

Earl Ray Tomblin  
Governor

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

August 26, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 25, 2011. 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 meet the medical requirements for Level of Care (B) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** 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 / [REDACTED]

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

**IN RE:     -----,**

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1459**

**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 August 25, 2011.

**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

-----, Registered Nurse, [REDACTED] Claimant's representative

-----, Claimant's witness

Kay Ikerd, Department's witness  
Melissa Bell, Department's witness

It should be noted that the Department participated in the hearing 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 Pertinent provisions of Aged/Disabled Waiver Policy Manual
- D-2 Pre-Admission Screening (PAS) assessment completed May 13, 2011
- D-3 Notice of Decision dated May 26, 2011

##### **Claimant's Exhibits:**

- C-1 Fax dated July 12, 2011 which includes prescription pad note from physician dated June 29, 2011

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

- 1) The Claimant was undergoing a required annual re-evaluation for the Title XIX Aged/Disabled Waiver Program during the month of May 2011.
- 2) A West Virginia Medical Institute (WVMI) registered nurse, Melissa Bell, visited the Claimant in her home and completed her Pre-Admission Screening (PAS) medical assessment (D-5) on May 13, 2011. She determined that the Claimant continues to meet the medical requirements for the program; however, she assessed the Claimant at a reduced level from the previous determination - Level of Care (B) rather than Level (C). The Claimant received fifteen (15) 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) During the hearing, the WVMi nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. The nurse also conceded that she made an error during the PAS assessment by not recognizing that the Claimant's physician had diagnosed her with dyspnea and assessing one (1) point for the diagnosis as a result. She added that she later determined that this diagnosis was provided by the physician on the Medical Necessity Evaluation Request form. With this additional one (1) point, the Claimant's total awarded points are now sixteen (16). The Claimant disagreed with the nurse's conclusions, and contends that an additional one (1) point each should be awarded for occasional bowel incontinence and intermittent disorientation.
- 4) The Claimant contends that she has occasional bowel incontinence and that she should be assessed one (1) point as a result. The nurse assessed her as having no bowel incontinence, and recorded the following relevant information on the PAS:

Member states she does not have accidents with bowels. Member states wears pull-ups every day and has leakage daily with bladder. Member has difficulty with hearing, member reports she has lost hearing aid and RN had to speak in loud voice and member required several repeats. Member states health has declined in last year...

The Claimant testified that she did not tell the WVMi nurse that she does not have accidents with her bowels. She added that she has difficulty hearing and that she cannot recall being asked about her bowel incontinence during the PAS assessment. She stated that she has bowel accidents at least 3 to 4 times weekly. The Claimant's homemaker, -----, was present during the assessment and testified that the Claimant has accidents with her bowels often, and that she has cleaned the bathroom on several occasions because of the accidents. She stated that she keeps pads on the Claimant's bed, and that sometimes she finds evidence of bowel accidents on the bed. She added that she does not recall being present when this area was discussed, and that she does not recall the Claimant saying that she does not have bowel accidents. She stated that she was periodically busy with other activities during the assessment and may not have been present when this area was assessed. The Claimant's representative and Registered Nurse with [REDACTED] -----, testified that she has been the Claimant's registered nurse since 2010, and that she is aware that the Claimant has occasional bowel incontinence and that her plan of care reflects this finding as a result. She stated that during her January 2011 assessment of the Claimant's needs, she documented that the Claimant is partially incontinent of bowels. She added that the Claimant is not bashful about reporting such problems and that she can only surmise that she may not have clearly heard and understood the question prior to reporting that she does not have such occurrences. The WVMi nurse stated that she believed the Claimant understood the question and answered appropriately. She added that she reviewed the PAS findings with all present at the end of the assessment and that none voiced disagreement.

The Claimant presented as evidence (C-1) a note from her physician, written on prescription pad and dated June 29, 2011, in which the physician provided that the

Claimant has occasional bowel incontinence. The Department objected to this evidence since it was not provided within two weeks of the notice of reduction, and noted that it is not possible to ascertain whether the physician is aware of the criteria for assessing occasional bowel incontinence during a PAS assessment. -----stated that the information was provided (C-1) to WVMi on July 12, 2011, as soon as it was obtained from the Claimant's physician. -----added that it took some time in order to obtain the verification from the Claimant's physician. The document (C-1) was allowed and will be given the weight deemed appropriate based on the circumstances involved.

- 5) The Claimant contends that sufficient information was provided to support an award of one (1) point for intermittent disorientation. The Claimant was assessed by the nurse as being oriented, and no points were awarded as a result. The WVMi nurse recorded the following pertinent information on the PAS:

Member was alert and oriented during assessment. Member was able to state all personal information correctly. Member denies being confused. HM [homemaker] states member does become confused at times but not often. Member states she is still doing all finances. Consent signed and correctly dated by member.

The WVMi nurse stated that the Claimant knew who she was, the date, and that the assessment was taking place. She states the Claimant indicated she was balancing her checkbook and managing her finances with no assistance. -----noted that the Claimant's homemaker reported during the assessment that the Claimant is occasionally disoriented, and that she is concerned that the nurse did not explore this in more detail with further questioning. She also stated that the Claimant has a history on previous PAS assessments of occasional bowel incontinence and intermittent disorientation. She added that the Claimant gets disoriented occasionally due to her diagnosis of hypoxia. The Claimant testified that her bills are paid directly and automatically from her checking account, and that this was set up years ago. She added that relatives help her with balancing the checking account. The Claimant's homemaker testified that the Claimant gets disoriented at times and forgets things. She added that the Claimant has "wonderful" days at times, but on other days she has problems with orientation. The Department's representative stated that confusion and disorientation are two totally different conditions. She added that the standard mode of identifying whether someone is disoriented is to determine whether they are oriented to person, place, and time.

The Claimant presented as evidence (C-1) dated June 29, 2011, a diagnosis written by the Claimant's physician on prescription pad paper on which he indicates that the Claimant has intermittent disorientation and hypoxia.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 – 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.

- 7) 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.

- 8) 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

- 9) 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.

- 10) Aged/Disabled Home and Community Based Services Waiver Policy Manual 501.3.4 states in pertinent part:

C. ...the QIO RN, through observation and/or interview process, completes the PAS. The RN will record observations and findings regarding the member's level of function in the home. RNs do not render medical diagnoses.

D. In those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

### **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 May 13, 2011, assessment having received fifteen (15) points. To be assessed at Level of Care (C) the Claimant must be assigned at least eighteen (18) points during the assessment.
- 3) The Department conceded that an error was made during the PAS assessment, and that an additional one (1) point should have been awarded for the Claimant's dyspnea. This brings the total awarded points to sixteen (16).
- 4) Policy provides that during the assessment process, the Department is to complete the PAS by means of both observation and/or an interview process in order to determine the individual's functional ability in the home.
- 5) The totality of the testimony and evidence provided during this hearing supports that the nurse did not accurately assess the Claimant in the area of "orientation." The Claimant's homemaker clearly reported that the Claimant is occasionally "confused." Testimony provided by the Department indicates that there is a difference between an individual being confused and being disoriented. The evidence shows the nurse did not explain this difference to those present during the interview and that she did not further evaluate this statement in order to determine whether the Claimant met the criteria for assessing intermittent disorientation. The nurse did

not clearly document whether the Claimant was oriented to person, place, and time, at the time of the assessment. The witness testimony during the hearing supports that the Claimant has intermittent disorientation, and the physician's diagnosis after the fact supports the testimony. One (1) point is assessed for intermittent disorientation.

- 6) The totality of the testimony and evidence supports that the nurse accurately assessed that the Claimant did not have occasional bowel incontinence based on the information available to her at the time of the assessment. The Claimant is documented as having reported that she does not have bowel accidents, and neither she nor the homemaker voiced disagreement with this assessment when the nurse reviewed her findings with them prior to ending the interview.
- 7) With the additionally awarded one (1) point for dyspnea, and the additional one (1) point for intermittent disorientation, the Claimant now has a total of seventeen (17) points, which supports a Level of Care (B). The Department was 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 **uphold** 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 26<sup>th</sup> Day of August, 2011.**

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**Cheryl Henson  
State Hearing Officer**