



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

September 29, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 29, 2011. Your hearing request was based on the Department of Health and Human Resources' action to reduce 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 fails to show 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 from Level (C) to Level (B).

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-1717**

**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 September 29, 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  
-----, Claimant's representative  
-----, Claimant's witness  
-----, Claimant's witness

Sara Birckhead, Department's representative  
Melissa Bell, Department's witness

It should be noted that the parties 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 July 12, 2011
- D-3 Notice of Decision dated August 4, 2011

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

None

#### **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 July 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-2) on July 12, 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 seventeen (17) 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. She noted that she originally assessed only fifteen (15) points for the Claimant; however, after she received additional information from the Claimant's physician she was able to award additional points for angina at rest and occasional incontinence, bringing the Claimant's total awarded points to seventeen (17).
- 4) The Claimant's representative contends that the Claimant has chest pain with exertion, and that an additional point should be awarded in this area. The nurse assessed her as having no chest pain with exertion, and documented the following during the PAS assessment interview:

No dx [diagnosis], no Rx [prescription], member stated she has chest pain at times but this is relieved by Gas X.

The Claimant's witness, -----, is a registered nurse with the [REDACTED] and functions as the Claimant's registered nurse. She stated that she deduced that if the Claimant is having angina at rest then it is reasonable that she would have angina with exertion. The Claimant testified that she does not have chest pain with exertion, and added that when she moves around in her bed she sometimes gets short of breath but does not relate any chest pain with exertion. She stated she believes the occasional pain to be resulting from gas. The WVMi nurse stated that she is not given the authority to make assumptions during assessments and that she bases her findings on what she observes and what the Claimant reports during the assessment. She stated that the Claimant had originally reported during the PAS assessment interview that she has chest pain at times but that it is relieved by medication taken for relief of gas. She added that although the physician's note containing additional diagnoses was sufficient to allow her to award a point for angina at rest, it was not specific enough to award a point for angina with exertion because it did not specifically indicate such. She added that the physician's note indicated that the Claimant has angina at rest and "CP" which she determined to be chest pain. The Claimant's representative and son, -----, stated that he had not observed the Claimant having angina with exertion.

- 5) 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.

- 6) 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.

7) 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

8) 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.

- 9) 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 July 12, 2011 assessment having received seventeen (17) points. To be assessed at Level of Care (C) the Claimant must be assigned at least eighteen (18) points during the assessment.
- 3) Policy provides that during the assessment process, the Department is to complete the PAS assessment by means of both observation and/or an interview process in order to determine the individual's functional ability in the home.
- 4) The Claimant disputed the Department's finding of no assessed point for angina with exertion.
- 5) The totality of the testimony and evidence provided during this hearing supports that the Department correctly assessed the Claimant in the area of angina with exertion, and that the Department correctly determined that no point will be awarded in this area. The Claimant clearly indicated during the PAS assessment that although she does have pain in her chest at times, that this is related to gas pain. She testified during the hearing that she does not have angina pain with exertion, and the physician's note submitted after the assessment does not clearly indicate that the Claimant has angina with exertion.
- 6) The Claimant 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 29<sup>th</sup> Day of September, 2011.**

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**Cheryl Henson  
State Hearing Officer**