



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

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

December 15, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 14, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the 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 and benefit levels for the Aged/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, 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 WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 501.5.1.1)

Information submitted at your hearing reveals that you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "B" rating. As a result, you are eligible to receive three (3) hours per day or 93 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to decrease your Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
[REDACTED]

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

**IN RE:** -----,

**Claimant,**

**v.**

**Action Number: 11-BOR-2241**

**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 telephonically on December 14, 2011 on a timely appeal filed October 13, 2011 and received by the Hearing Officer on November 4, 2011.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

**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's Guardian/Attorney-in-Fact  
-----, Case Manager, [REDACTED]  
Kay Ikerd, RN, Bureau of Senior Services  
Lee Ann Beihl, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a 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 homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Section 501.5.1.1

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) assessment completed on September 19, 2011
- D-3 Notice of Decision dated September 26, 2011
- D-4 Pre-Admission Screening (PAS) assessment completed on May 6, 2010

**VII. FINDINGS OF FACT:**

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility and assign an appropriate Level of Care.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Lee Ann Beihl completed a Pre-Admission Screening (PAS) medical assessment (D-2) on September 19, 2011 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 17 points to documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" - eligible for three (3) hours per day or 93 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "C"- eligible for four (4) hours per day or 124 hours per month of homemaker services.
- 3) The Claimant was sent notification on September 26, 2011 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) During the hearing, the Claimant's representatives contended that an additional point should be awarded for significant arthritis. It should be noted that the Claimant had been awarded one (1) point for significant arthritis on her previous PAS dated May 6, 2010 (D-4). The WVMI Nurse testified that the Claimant was not awarded a point for this condition on the current PAS because

she denied having the condition and was taking no prescribed medication for arthritis at the time of the assessment. -----, the Claimant's Guardian and Attorney-in-Fact, testified that the Claimant has lymphoma and is currently taking pain medication related to this condition, therefore, she is no longer taking her previous arthritis medication. -----, who was present during the PAS assessment, contended that the Claimant cannot be left alone and requires constant assistance. ----- said she believes physicians now consider the Claimant's prognosis as terminal. The prognosis had been listed as "deteriorating" on the PAS. -----, Case Manager with [REDACTED] testified that the Claimant has a seizure disorder and her dependency on others fluctuates from day to day.

Kay Ikerd, Registered Nurse with the Bureau of Senior Services (BoSS), indicated that the Claimant can request an increase in hours if her condition has changed since the date of the PAS, or if she can provide additional information concerning her diagnoses.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.5.1.1(a) and 501.5.1.1(b) (D-1): 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- 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.

- 2) The Claimant was awarded 17 points as the result of a PAS completed by WVMI in September 2011 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, no additional points are awarded to the Claimant. The WVMI Nurse indicated that the Claimant denied having significant arthritis at the time of the PAS and was no longer taking arthritis medication. Therefore, the condition could not be verified. In addition, the Claimant's condition was not considered terminal at the time of the assessment.
- 4) The Claimant's total number of points remains at 17, rendering her eligible to receive a Level "B" Level of Care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** 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 15th Day of December, 2011.**

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**Pamela L. Hinzman  
State Hearing Officer**