



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

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

March 17, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 15, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours from Level C care to Level B.

In arriving at a decision, the State Hearings 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. These regulations provide that 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 Waiver Policy and Procedures Manual § 501.3).

The information submitted at your hearing revealed that you were correctly evaluated as a Level B based on the information provided at your November 2010 assessment.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker hours to Level B from Level C care.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau of Senior Services  
West Virginia Medical Institute  
[REDACTED]

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

-----,

**Claimant,**

**v.**

**Action Number: 10-BOR-2422**

**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 February 15, 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.

It should be noted here that the claimant's benefits under the Aged/Disabled Waiver program have continued at Level C care pending a decision.

**II. PROGRAM PURPOSE:**

The Program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health & Human Resources.

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

-----, Witness for Claimant

-----, RN; Case Manager, [REDACTED]

-----, Homemaker

Kay Ikerd, RN, Bureau of Senior Services  
Brenda Myers, RN, West Virginia Medical Institute

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

All participant testified by phone.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department's proposal to reduce Claimant's homemaker hours is correct.

#### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2

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

##### **Department's Exhibits:**

- D-1 Aged/Disabled Home and Community Based Waiver Policy Manual § 501.3.2
- D-2 Pre-Admission Screening Form dated November 8, 2010
- D-3 Notice of Decision dated November 15, 2010

##### **Claimants' Exhibits:**

None

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

- 1) Claimant was re-evaluated for medical eligibility for the ADW program on November 8, 2010. A Pre-Admission Screening Form (PAS) was completed that date by Brenda Myers, RN with the West Virginia Medical Institute (WVMI).

Claimant received a total of 14 points on the November 2010 PAS, reducing her level of care from Level C to Level B care (D-2).

- 2) -----, Claimant's daughter, testified that her mother needs help with meal preparation and household chores. -----stated her mother was hospitalized two (2) months ago and requires more help. -----stated Claimant has frequent periods of vertigo and is bedridden for days during these episodes.

- 3) -----, Claimant's homemaker, testified that Claimant has constipation, requiring the use of laxatives. -----stated after taking a laxative, Claimant will have diarrhea and have an

accident. -----stated Claimant walks slowly and is unable to make it to the bathroom in time.

-----testified that Claimant's condition is deteriorating. She stated Claimant must use her walker all the time or she will fall without it. -----stated Claimant is unsteady on her feet and fell two (2) weeks prior, requiring assistance in getting to her feet. -----stated Claimant was nervous during the assessment and may not have answered the nurse's questions truthfully.

- 4) Claimant testified that she is "feeble" and cannot do anything for herself. Claimant stated she has bowel accidents when she cannot make it to the bathroom and her homemaker must clean her up.
- 5) Brenda Myers, assessing nurse with WVMI, testified that a bowel accident after the use of a laxative is not considered incontinence. When she questioned Claimant about bowel continence at the assessment, Claimant advised that she may have a bowel accident once a year. Claimant's constipation and the use of laxatives were not discussed during the assessment.

Ms. Myers stated she observed Claimant transferring and walking in the home with the aid of furniture and her walker. There was no mention of the need for physical assistance in walking or transferring at the assessment.

- 6) Aged/Disabled Home and Community Based Waiver Manual § 501.3.2.1 and 501.3.2.2 states:

- #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. Claimant was awarded 14 points as the result of a PAS completed by WVMI in November 2010 in conjunction with her annual medical evaluation.
- 2) The matter before the Board of Review is whether or not the assessment completed by the WVMI nurse in November 2010 was accurate based on the information known at the time. There were no discrepancies reported or contested during the assessment nor was additional documentation provided on Claimant's behalf after the Notice of Decision was issued. It is the Claimant's responsibility to report accurate information to the nurse during the assessment.
- 3) Testimony presented indicated Claimant's condition has deteriorated since the assessment due to a recent hospitalization. The PAS evaluates Claimant's current condition, and any decline in Claimant's health in the months after the assessment cannot be considered.
- 4) Claimant was correctly evaluated as a Level B based on the information provided in November 2010.

## **IX. DECISION:**

It is the decision of the State Hearing Office to **uphold** the proposal of the Department to reduce Claimant's homemaker hours to a Level B care.

## **X. RIGHT OF APPEAL:**

See Attachment

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision  
Form IG-BR-29

**ENTERED this 17<sup>th</sup> day of March 2011.**

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**Kristi Logan  
State Hearing Officer  
Member, Board of Review**