



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

March 15, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 15, 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 continue to meet the medical requirements for Level of Care (C) in the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** 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 / -----

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

-----,

**Claimant,**

**v.**

**Action Number: 11-BOR-432**

**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 March 15, 2011 on a timely appeal filed December 23, 2010.

**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

Kay Ikerd, Bureau of Senior Services, Department representative  
Paula Clark, Department's witness

It should be noted that the Department participated telephonically.

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 Aged/Disabled Home and Community-Based Services Manual Section 501, two (2) pages
- D-2 Pre-Admission Screening (PAS) assessment completed December 10, 2010, nine (9) pages
- D-3 Notice of Decision dated December 16, 2010

##### **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 December 2010.
- 2) A West Virginia Medical Institute (WVMI) registered nurse, Paula Clark, visited the Claimant at her home and completed her Pre-Admission Screening (PAS) medical assessment (D-2) on December 10, 2010. She determined that the Claimant continues to meet the medical requirements for the program. However, she was assessed at a reduced level from the previous determination; Level of Care (B) rather than Level (C). The Claimant received sixteen (16) 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) The Claimant contends that additional points should be awarded in the areas of orientation and arthritis. Each area is addressed separately below:

##### *Orientation*

The WVMI nurse testified that she based her assessment in this area on the Claimant's functioning abilities on the date of the assessment, and found her to be totally oriented. She stated that although the Claimant reported episodes "in the past" involving her being unable to remember who she was, who her daughters were, and where she was

physically located, she was required to derive her rating in this area based on the Claimant's functioning on the date of the PAS assessment. She documented the following pertinent information on the PAS:

Member reports she forgets who her daughters are, who she is, and where she is at. Member was able to tell me her birthday, SS#, phone #, address, the month, the day of the month, the year, and the president. Member was not able to tell me the day of the week. Member was able to sign and date her consent form correctly.

The WVMi nurse testified that on the date of the assessment, the Claimant was able to provide a large amount of correct personal information and that because she knew such specific information she was rated as being totally oriented. She stated that normally during an assessment, when a member is unable to remember two areas correctly she will consider them to be intermittently disoriented. She added that the Claimant only erred in one area, that being the ability to recall the day of the week.

The possible ratings for orientation include total orientation, intermittent orientation, totally disoriented, and comatose. Kay Ikerd, a Registered Nurse with the Bureau of Senior Services, explained that to be considered totally disoriented, the Department considers that an individual must be completely disoriented to person, place and time. She added that in considering intermittent disorientation, the Department considers that an individual who knows his or her name, the month of the year and/or season, but cannot tell you where he or she is physically located, is intermittently disoriented. She added "if she is partially oriented, that is intermittent orientation." On direct questioning from the Hearing Officer regarding providing a more specific description of intermittent orientation and why timeframes other than the specific approximate one-hour timeframe during the assessment were not utilized in rating functioning in this area, Ms. Ikerd replied that the Department "adds up all the pieces and looks at the total picture of the client", but that when an individual, on the date of the assessment, answers with such specificity as was documented for the Claimant in this area, that individual would not be found to be intermittently disoriented.

The Claimant's daughter and power of attorney, ----- contends that the Department did not consider that the Claimant is disoriented at times and only considered her functional ability during the approximate one (1) hour long PAS assessment interview. She added that the Claimant often does not know any of her daughters, and forgets who she is as well as her physical location. Further, she added that the Claimant can no longer use the kitchen stove because of her forgetfulness. She agreed that on the date of assessment her mother recalled most of the information documented, but added that she did not know the day of the week or the president's name. She testified that her mother has a history of mini-strokes. She added that her mother responded to the question regarding the president's name by saying "that black guy." She testified that she corrected her mother by providing the name "Obama".

Policy in the Department's Aged/Disabled Home and Community Based Services Manual §501.3.4.C provides that the nurse completes the PAS assessment by method of an observation and/or interview process, and records observations and findings regarding the member's level of functioning in the home. There is no definition provided in the Department's policy regarding "intermittent disorientation."

The word “intermittent” is defined in the Webster’s Seventh New Collegiate Dictionary 442 (1967), as meaning “coming and going at intervals” and “stresses breaks in continuity.”

It is documented in the December 2010 PAS that the Claimant has a diagnosis of dementia, and is prescribed Aricept for this condition.

### *Arthritis*

The Claimant was not assessed a point in this area. The WVMi nurse documented the following on the PAS:

Member reports arthrtis [sic] in her elbows, hands, hips, and knees.  
Member reports she takes asa [sic] and ibuprofen for arthritis. No dx [diagnosis] on referral form. No rx [prescription] med [medication] noted.

The WVMi nurse testified that because she was unable to locate a diagnosis of arthritis for the Claimant, and also was unable to find evidence of a prescription medication for the claimed arthritis, she could not assess a point in this area. When questioned regarding the meaning of the entry spelled “asa” in her documented comments, she responded that she meant for this entry to represent the word “aspirin”. She added that she did not contact the physician for clarification before arriving at this decision.

Policy in the Department’s Aged/Disabled Home and Community Based Services Manual §501.3.4.D, provides that in cases where there is a medical diagnosis question, the nurse will attempt to clarify the information with the referring physician.

The Claimant testified that her hands “cramp up”, and that she has arthritis pain in her hands, hips and knees. The December 2010 PAS contains an entry under “Listed Current Medications” for 800 milligram Ibuprofen to be take three (3) times daily for pain. The Claimant’s daughter testified that the reported ibuprofen prescription listed on the PAS is used for her arthritis pain. She added that the Claimant cannot reach her arms up above parallel due to the arthritis pain.

Kay Ikerd provided that prescription ibuprofen is a type of medication that is sometimes utilized to treat arthritis pain.

- 4) 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.

- 5) 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.

6) 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

7) 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.

### **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 his December 10, 2010 assessment, having received sixteen (16) 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 by means of both observation and/or an interview process in order to determine the individual's functional ability in the home. Additionally, policy dictates that in cases where there is a medical diagnosis question, the nurse will attempt to clarify the information with the referring physician. Policy does not specify a definition for intermittent orientation.
- 4) The totality of the testimony and evidence provided during this hearing support that the Claimant also has arthritis and that she is intermittently disoriented. As such, an additional one (1) point is awarded for arthritis, and an additional one (1) point is awarded for intermittent disorientation, for a total of two (2) additional awarded points in these areas.
- 5) The PAS assessment clearly shows that the Claimant reported that she has arthritis, and that she takes prescription ibuprofen for this pain, which is found to be a medication sometimes utilized for treatment of arthritic pain. The Department's representative testified that ibuprofen is sometimes used to treat arthritis. The WVMi nurse did not contact the physician for clarification in this area as required by policy.
- 6) The PAS assessment also clearly shows that the Claimant reported that she has problems with orientation at times. The Claimant and her daughter reported that at times she forgets her daughters, her name, and her location. She has a diagnosis for dementia as well as prescribed medication for the condition. In the absence of a policy definition, the Webster's Seventh New Collegiate Dictionary 442 (1967) definition for "intermittent" is used. It provides the meaning of "intermittent" as "coming and going at intervals, and stresses breaks in continuity." Although the Claimant was able to provide much personal information on the date of the assessment, enough evidence exists to support that on an intermittent basis the Claimant is disoriented. The Department did not consider her functioning at times other than the approximate one hour timeframe during the PAS assessment interview.
- 7) A total of two (2) additional points are awarded as a result of this hearing. The additional two (2) points, when added to the Claimant's already awarded sixteen (16) points, bring the Claimant's total awarded points to eighteen (18), which supports Level of Care (C). The Department was not 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 **reverse** 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 15<sup>th</sup> Day of March, 2011.**

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**Cheryl Henson  
State Hearing Officer**