



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

June 17, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 10, 2011. Your hearing request was based on the Department of Health and Human Resources' proposed reduction of homemaker hours under the Aged and Disabled Waiver Program, based on 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.

The Aged and Disabled Waiver (ADW) Program is based on current policy and regulations. One of these regulations specifies that for the ADW Program the number of homemaker service hours is determined based on the level of care. The level of care is determined by evaluating the Pre-Admission Screening (PAS) form and assigning points to documented medical conditions that require nursing services. For an individual to be awarded the level of care designated as level 'C,' a minimum of 18 points must be determined from the PAS. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2)

The information submitted at the hearing revealed that the Department was incorrect in its determination of your level of care and corresponding homemaker hours.

It is the decision of the State Hearing Officer to **reverse** the Department's determination of homemaker hours under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 11-BOR-911

**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 June 17, 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. This fair hearing was convened on June 10, 2011 on a timely appeal, filed March 22, 2011.

It should be noted that benefits have been continued by the Department.

All persons offering testimony were placed under oath.

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 witness

-----, Claimant's witness

Cecilia Brown, Department representative

Elisa Holley, Department witness

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its determination of the Claimant's homemaker hours under the Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.2.1 - 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services, dated February 23, 2011
- D-3 Notice of Decision, dated March 15, 2011
- D-4 Note from Claimant, dated March 17, 2011

VII. FINDINGS OF FACT:

- 1) Claimant is an 82-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on February 23, 2011 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about March 15, 2011. The notice states, in pertinent part:

You have been determined medically eligible to continue to receive Waiver services.

The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month.

- 3) Policy from Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.2.1 – 501.3.2.2, states, in pertinent part:

501.3.2.1 LEVELS OF CARE CRITERIA

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

Section	Description of Points
#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. 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
#35	Prognosis – 1 point if Terminal

Total number of points possible is 44.

All of the above levels of care criteria information also applies to Personal Options.

503.2.2 LEVELS OF CARE SERVICE LIMITS

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

- 4) On the February 23, 2011, Pre-Admission Screening, or PAS (Exhibit D-2), Elisa Holley – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – assessed 17 points for the Claimant. Four points were awarded for medical conditions and symptoms, one for vacating, ten for functional abilities in the home, one for professional and technical care needs (continuous oxygen), and one for medication administration. The 17 points awarded correspond to the level of care “B,” and the service limit of 93 hours monthly noted on the decision (Exhibit D-3) issued to the Claimant.
- 5) ----- – the Claimant’s home caregiver – disputed four areas: the medical condition of *congestive heart failure (CHF)*, *orientation*, *transferring*, and *communication*. ----- testified that the Claimant has a diagnosis of CHF.
- 6) Ms. Holley testified that she was aware of the Claimant’s diagnosis of CHF, but that the Claimant denied chest pains during the assessment. She testified that the Claimant needs a diagnosis or medications for a medical condition to receive a point for that medical condition.
- 7) -----, a Registered Nurse employed by [REDACTED] – the Claimant’s Case Management Agency – noted the medications listed on the PAS form, including Lasix, Potassium, and Zaroxolyn, and testified that these medications are for CHF.
- 8) Cecilia Brown, representative for the Department’s Bureau of Senior Services, conceded a point should have been awarded for the medical condition of CHF.

VIII. CONCLUSION OF LAW:

- 1) Policy dictates that an individual’s level of care for the Aged and Disabled Waiver Program is determined by the number of points assessed on the PAS assessment tool. The Claimant received 17 points on her February 23, 2011, PAS, and was awarded a level of care ‘B.’ To be awarded a level of care ‘C,’ a minimum of 18 points is required. During the hearing, the Department conceded that an additional point should have been awarded for the medical condition of CHF, resulting in a corrected 18 points and level of care “C.” The other proposed areas on the Claimant’s behalf were not considered because, if awarded, they would not result in a point change sufficient to achieve a level of care “D” – with or without these proposed points, the level of care would remain the same as that achieved by the one point conceded in the hearing.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's determination of homemaker hours under the Aged and Disabled Waiver Program, and to establish the Claimant's level of care for this program as a level of care "C," with a maximum of 124 monthly service hours.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of June, 2011.

Todd Thornton
State Hearing Officer