



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 14, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 7, 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 'D,' a minimum of 26 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 correct in its determination of your level of care and corresponding homemaker hours.

It is the decision of the State Hearing Officer to **uphold** 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-930**

**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 14, 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 7, 2011 on a timely appeal, filed March 16, 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's representative  
Kay Ikerd, 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 3, 2011
- D-3 Notice of Decision, dated March 9, 2011

**VII. FINDINGS OF FACT:**

- 1) Claimant is an 81-year old female recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on February 3, 2011 (Exhibit D-2).
- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about March 9, 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 124 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:

<b>Section</b>	<b>Description of Points</b>
#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**

<b>Level</b>	<b>Points Required</b>	<b>Hours Per Day</b>	<b>Hours Per Month</b>
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

- 4) On the February 3, 2011, Pre-Admission Screening, or PAS (Exhibit D-2), Elisa Holley – a Registered Nurse employed by West Virginia Medical Institute (WVMI) – assessed 20 points for the Claimant. Six points were awarded for medical conditions and symptoms, one for decubitus, one for vacating, nine for functional abilities in the home, one for professional and technical care needs (continuous oxygen), one for medication administration, and one for dementia.
- 5) ----- – the Claimant’s daughter and representative – disputed twelve areas: *eating, bathing, dressing, grooming, continence of bladder and bowels, orientation, transferring, vision, hearing, communication, and prognosis.*
- 6) The Claimant was assessed as requiring one-person assistance, with regard to *transferring*, and received two points in this area, the maximum allowed by policy. ----- testified that the Claimant should have been assessed with a *prognosis* of ‘deteriorating’ instead of ‘stable,’ which – even if determined – would not result in a point change in this area; by policy, a point is only awarded in this area for a terminal prognosis.
- 7) The Claimant was assessed as requiring physical assistance in the areas of *eating, bathing, dressing, and grooming.* ----- testified that the Claimant requires total care in each of these areas, but did not elaborate. Ms. Holley testified that the Claimant could not be assessed as requiring total care in these areas because of her ability to partially assist a caregiver in these areas. Ms. Holley testified that regarding *eating*, the Claimant can “still somewhat get food,” and provided the following comments on the assessment form (Exhibit D-2, page 6 of 7), in pertinent part:

HOMEMAKER STATES THAT SHE NEEDS ASSISTANCE EATING BECAUSE SHE “STABS” AT HER PLATE AND DOESN’T ALWAYS HIT THE FOOD.

Ms. Holley’s comments regarding *bathing* are as follows:

Bathing: MEMBER REQUIRES ASSISTANCE WITH BATHING PER HOMEMAKER, STATES THAT SHE IS ABLE TO WASH FRONT AREAS BUT NOT ABLE TO WASH FEET, LEGS OR BACK.

Ms. Holley commented on *dressing* as follows, in pertinent part:

CLIENT IS ABLE TO LIFT HER ARMS ABOVE HER HEAD WITH ELBOWS BENT TO AID IN GETTING GOWNS ON.

Ms. Holley commented on *grooming* as follows, in pertinent part:

MEMBER IS ABLE TO BRUSH HAIR WITH SOMEONE HANDING HER A BRUSH...MEMBER CAN REACH WITH HANDS AND TOUCH EACH SIDE ARM BUT RANGE OF MOTION IS LIMITED.

- 8) With regard to *continence of bladder*, the Claimant was assessed as continent, and with regard to *continence of bowel*, the Claimant was assessed as occasionally incontinent. ----- testified that the Claimant is incontinent in both areas, stating that she has accidents “very often,” and describing the frequency of accidents as four times per week. Ms. Holley made the following comments on these areas of the PAS review:

Continence: Bowel/Bladder: DAUGHTER STATES THAT MEMBER HAS HAD ISSUES WITH BOWEL INCONTINENCE [sic] ABOUT 2-3 MONTHS AGO, DAUGHTER STATES THAT SHE HAS NOT SEEN ANY URINARY INCONTINENCE [sic]. MEMBER DENIES URINARY INCONTINENCE.

- 9) ----- testified regarding *orientation* for the Claimant, stating that she is very confused, and that some days she is “OK,” but other days not. Ms. Holley assessed the Claimant as oriented. Ms. Holley’s comments on this area are as follows:

Orientation: DAUGHTER [sic] THAT THE MEMBER HAS RANDOM CONFUSION, MEMBER WAS ALERT AND ORIENTED TIMES 3 FOR MY ASSESSMENT. MEMBER KNEW DOB, CURRENT PRESIDENT, AND CURRENT YEAR.

- 10) In the area of *vision*, the Claimant was assessed as “impaired/correctable.” ----- and Ms. Holley testified that the Claimant is legally blind. Ms. Holley noted that the Claimant is legally blind in her PAS comments. Ms. Ikerd testified that legally blind is not the same as total blindness. Ms. Holley testified that the Claimant was assessed as “impaired/correctable” because the Claimant did not present a diagnosis of legal blindness.

- 11) The Claimant was additionally assessed as ‘impaired/correctable’ in the area of *hearing*. ----- testified that the Claimant “can’t hear” and that she “has to talk loud and repeat herself” to be heard by the Claimant. Ms. Holley’s PAS comments on this area are as follows:

Hearing: HOMEMAKER AND DAUGHTER STATES [sic] THAT SHE CAN NOT HEAR VERY WELL AT TIMES AND THAT THEY HAVE TO RAISE THEIR VOICE FOR MEMBER TO HEAR.

- 12) ----- testified that the Claimant is confused and is unable to tell you what she wants, with regard to the area of *communication*. Ms. Ikerd testified that this area refers to the ability to “physically verbalize,” and Ms. Holley testified that the Claimant was able to speak during the assessment and was understandable.

- 13) Ms. Holley and ----- testified that ----- was present during the assessment of the Claimant. When asked about the discrepancies between her description of the Claimant presently and at the time of assessment, ----- testified that she did not understand the questions asked of her during the assessment.

## VIII. CONCLUSIONS 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 20 points on her February 3, 2011, PAS, and was awarded a level of care 'C.' To be awarded a level of care 'D,' a minimum of 26 points is required.
- 2) In the proposed area of *transferring*, the Claimant received the maximum points allowable by policy, and in the *prognosis* area, the proposed assessment finding would not result in a point change.
- 3) In the proposed areas of *eating, bathing, dressing, and grooming*, the testimony on the Claimant's behalf that she requires total care was demonstrated to be false by the specific examples noted by the WVMi nurse in her PAS comments. The Department correctly assessed these areas.
- 4) The testimony of the Claimant's daughter regarding *continence of bladder and bowel* for the Claimant contradicts her own statements – and the statements of the Claimant – as noted by the WVMi nurse at the time of the assessment. The testimony of the Claimant's daughter in these areas, as well as her explanation for the discrepancies, is unconvincing. The Department correctly assessed these areas.
- 5) The testimony of the Claimant's daughter, and the WVMi nurse's comments regarding "random confusion," do not present the Claimant as oriented. Although the Claimant is not totally disoriented, she should have been assessed as intermittently disoriented, a "Level 2" finding which would have resulted in an additional point in the area of *orientation*.
- 6) Testimony on the Claimant's behalf and the documentation of the WVMi nurse presented the Claimant as legally blind. Although the Department clarified that this is not the same standard as total blindness, there was no testimony to support the conclusion of the Department that this condition is correctable as opposed to not correctable. Department policy does not require a diagnosis to establish levels within functional areas, but if there were such a policy requirement it would pertain to both the elements of impairment and correction; neither an "impaired/correctable," nor an "impaired/not correctable" assessment would be possible without a diagnosis. In light of these factors, the Claimant should have been assessed as "impaired/not correctable," a "Level 3" finding which would have resulted in an additional point in the area of *vision*.

- 7) Testimony and evidence describe the Claimant as having difficulty with *hearing*, requiring persons to speak loudly and possibly repeat themselves to be heard by the Claimant. As described, the Claimant was correctly assessed as “impaired/correctable.”
- 8) The Claimant was assessed as “not impaired” in the area of *communication*. Department testimony clarified that this area refers to the ability to physically verbalize, and that the Claimant demonstrated that she is capable in this regard. Testimony on the Claimant’s behalf referred to confusion, or the previously noted area of *orientation*. The Department correctly assessed the Claimant in the area of *communication*.
- 9) With one additional point each in the areas of orientation and vision, the Claimant should have received 22 points on her PAS assessment instead of 20; however, 22 points is still within the range established by policy for a level of care “C.” The Department was correct to assign a level of care “C,” and the corresponding monthly service hours, to the Claimant.

**IX. DECISION:**

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

**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.**

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**Todd Thornton**  
**State Hearing Officer**