



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

May 31, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 31, 2012. Your hearing request was based on the Department of Health and Human Resources' assessment of Level B care under the Aged/Disabled Waiver 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 for the Aged/Disabled Waiver program is based on current policy and regulations. These regulations state 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 § 501.5).

The information submitted at your hearing revealed that you meet the medical criteria to receive Level C care.

It is the decision of the State Hearing Officer to **Reverse** the action of the Department to award you Level B care under the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau of Senior Services

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

**IN RE:**     -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1047**

**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 ----- held on May 31, 2012. 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 a timely appeal, filed March 12, 2012.

**II.    PROGRAM PURPOSE:**

The Aged/Disabled Waiver (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 Homemaker

Kay Ikerd, RN, Bureau of Senior Services

Courtenay Smith, RN, West Virginia Medical Institute

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

All participants testified by phone.

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

The question to be decided is whether or not Claimant was correctly evaluated as meeting Level B care under the Aged/Disabled Waiver program.

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

Aged/Disabled Waiver Services Policy Manual § 501.5.1

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

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

- D-1 Aged/Disabled Waiver Services Policy Manual § 501.5.1
- D-2 Pre-Admission Screening dated February 6, 2012
- D-3 Notice of Decision dated February 13, 2012
- D-4 Medical Conditions/Symptoms Verification Request dated February 10, 2012

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

- 1) Claimant was reevaluated for medical eligibility for the Aged/Disabled Waiver program on February 6, 2012. A Pre-Admission Screening (PAS) was completed that date by Courtenay Smith, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received 16 points on the February 2012 PAS, which equates to a Level B care. Claimant appealed not being awarded Level C care.

- 2) Claimant reported having arthritis, dysphagia, expressive aphasia, pain, depression and decubitus to the WVMI nurse during the assessment. Claimant did not have diagnoses for these conditions or prescription verifications for the WVMI nurse to award points (D-2).

Courtenay Smith, RN with WVMI, sent a request to Claimant's physician on February 10, 2012 for verification of the above medical conditions. Ms. Smith testified WVMI did not receive the verification form until March 7, 2012, outside of the allotted two week time period allowed for additional information (D-4). Claimant's physician verified diagnoses of arthritis, pain, depression and decubitus.

- 3) Claimant testified his physician faxed the verification form to WVMI initially on February 22, 2012. The verification was faxed again on March 7, 2012, when it was apparent that WVMI had not received the first form.

- 4) Kay Ikerd, RN with the Bureau of Senior Services, pointed out an illegible line below the confirmation date of March 7, 2012, when WVMi received the fax. Ms. Ikerd speculated this could have been the date of a previous submission, but without evidence indicating Claimant's physician had attempted to submit the verification within the two week time frame, points for the diagnoses could not be given (D-4).
- 5) Aged/Disabled Waiver Services Policy Manual § 501.5.1.1 states:
  - #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 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
  - #35 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 16 points as the result of a PAS completed by WVMi in February 2012 in conjunction with his annual medical evaluation.
- 2) Testimony indicated Claimant's physician returned the verification request to WVMi by the date it was due. Claimant advised the WVMi nurse during the assessment of his medical conditions, therefore lending credibility to Claimant's testimony. One (1) point

each for arthritis, pain, depression (mental disorder) and decubitus will be awarded to Claimant under Medical Conditions/Symptoms.

- 3) Claimant meets the medical criteria for Level C care under the Aged/Disabled Waiver program.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to award Claimant with Level B care under the Aged/Disabled Waiver program. Four (4) additional points will be added to Claimant's February 2012 PAS under Medical Conditions/Symptoms.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 31<sup>st</sup> day of May 2012**

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**Kristi Logan**  
**State Hearing Officer**