



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

Rocco S. Fucillo  
Cabinet Secretary

August 9, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 17, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours under the Aged/Disabled Waiver program from Level D to Level C care.

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 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 WVM (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.5).

The information submitted at your hearing revealed that you no longer meet the medical criteria required to continue receiving Level D care.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce your homemaker hours to Level C care.

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1420**

**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 July 17, 2012, by videoconference. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources' Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed May 15, 2012.

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

**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  
-----, Witness for Claimant

Kay Ikerd, RN, Bureau of Senior Services  
Teena Testa, RN, West Virginia Medical Institute

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

**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 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 April 25, 2011
- D-3 Pre-Admission Screening dated April 25, 2012
- D-4 Notice of Decision dated April 30, 2012

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the Aged/Disabled Waiver program on April 25, 2012. A Pre-Admission Screening (PAS) was completed that date by Teena Testa, RN, with the West Virginia Medical Institute (WVMI) (D-3).

Claimant received 19 points on the April 2012 PAS, which equates to a Level C care. Claimant needed seven (7) additional points to continue receiving homemaker services under Level D care (D-3).

- 2) Claimant's daughter, -----, testified that her mother's condition has worsened in the past year and she could not understand the proposed decrease in homemaker hours. ---- -- stated she answered the WVMI nurse's questions during the assessment in previous years, but felt like she may have been out of place in doing so. ----- let her mother answer the questions during this year's assessment, interjecting throughout the interview to correct her mother when she contradicted herself.

----- stated Claimant chokes easily when eating and needs to have her foods cut up for her. Claimant has a blocked artery and can no longer walk. She must use oxygen more frequently due to shortness of breath.

----- stated Claimant requires total care in bathing and grooming, as she cannot complete these activities without assistance. Claimant's orientation has decreased. ----- stated she could not keep up with the point system for the functional abilities, but knew that her mother's health was deteriorating.

- 3) Claimant testified she exaggerated her abilities to the WVMI nurse for fear of being placed in a nursing home.

- 4) Teena Testa, RN with WVMI, testified to the PAS she completed in April 2012 for Claimant. Claimant reported participating in bathing and grooming activities so she could not assess her as requiring total care in those areas. Claimant was able to feed herself, which does not equate to total care for eating. Claimant was given a point for a diagnosis of dyspnea, but Ms. Testa stated she could not give additional points for the increased use of oxygen unless Claimant used it continuously.

Ms. Testa stated Claimant was oriented to person, place and time during the assessment and did not doubt the veracity of her statements. Ms. Testa stated Claimant's daughter participated in the assessment and she reviewed her findings at the end of the visit, with no objections from Claimant or her daughter.

- 5) Pertinent parts of the April 2011 PAS document (D-2):

Decubitus: Client retains an open, non-draining, reddened area, quarter-sized, on her left elbow, upon which she balances the majority of her weight, while trying to remain in an upright position in her scooter.

Continence: Client has almost daily loss of bladder and bowel control; she is unable to make it to the bathroom in time.

Orientation: Client knew day, date and year; she did not know her current address; she stays with her daughter most of the time.

Communication: Client is slow to respond to most questions; ----- finishes half of them for her.

Prognosis: Terminal

- 6) Pertinent parts of the April 2012 PAS document (D-3):

Decubitus: No bedsores per the daughter.

Eating: Client states she is able to feed herself. She notes she does not think she can cut up her meats herself.

Bathing: Client notes she can wash her face herself. Client notes her daughter does wash her chest, arms and hands.

Continence: Client notes her bowels move every other day. She notes she does have accidents when takes a laxative. She does not have accidents real often with her bowels. She notes she does not have as many accidents with her bowels as she has with her bladder.

Orientation: Client notes her name. Client is aware of her address and her date of birth. Client notes the month is April yr 2012. Client notes it is morning.

Communication: Speech was clear and understandable. She notes she does have a hard time getting the words out.

Prognosis: Stable

7) 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 19 points as the result of a PAS completed by WVMi in April 2012 in conjunction with her annual medical evaluation. Based on the points received on the PAS, Claimant was evaluated at a Level C care.
- 2) Claimant received the maximum allowable points for grooming, transferring and walking. No additional points can be derived from these areas.

- 3) Testimony indicated Claimant participates in bathing and is able to feed herself. Based on this information, Claimant cannot be assessed as requiring total care in these areas and no additional points can be awarded.
- 4) Claimant was oriented during the medical evaluation and able to communicate with the WVMI nurse. Claimant answered questions appropriately and needed no interpretations for the WVMI nurse to understand her. No additional points can be awarded in these areas.
- 5) Based on the testimony and documentation presented, Claimant no longer meets the medical criteria required to continue receiving Level D care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's homemaker hours under the Aged/Disabled Waiver program to Level C care.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 9<sup>th</sup> day of August 2012**

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