



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

October 11, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 2, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services 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 and Disabled Waiver Services program is based on current policy and regulations. These regulations provide that the number of homemaker service hours are 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 are reviewed and approved by West Virginia Medical Institute (WVMI) (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.5.1).

The information which was submitted at your hearing revealed that while you remain medically eligible for participation in the Aged and Disabled Waiver program, your LOC should be reduced from a level "C" to a level "B".

It is the decision of the State Hearing Officer to uphold the proposal of the Department to reduce your homemaker service hours under the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services program.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review  
Kay Ikerd-Bureau of Senior Services  
Rescare Home Care

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

**IN RE:     -----,**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1988**

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on October 2, 2012, on a timely appeal, filed August 8, 2012.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

**II.    PROGRAM PURPOSE:**

The Aged and Disabled Waiver program, hereinafter ADW, 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 Attorney-In-Fact

-----, RN, Case Manager, Rescare Home Care

Kay Ikerd, RN, Bureau of Senior Services (BoSS), Department representative

Brenda Myers, RN, West Virginia Medical Institute (WVMI), Department witness

Presiding at the hearing was Eric L. Phillips, 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 was correct in its proposal to reduce the Claimant's homemaker service hours provided through the Medicaid Aged and Disabled Waiver program.

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

Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.1(a) and 501.5.1.1 (b)

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

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

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.1(a) and 501.5.1.1 (b)
- D-2 Pre-Admission Screening dated July 2, 2012
- D-3 Notice of Decision dated July 30, 2012
- D-4 Pre-Admission Screening dated July 28, 2011

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

- 1) On July 2, 2012, the Claimant was medically assessed to determine her continued eligibility and to assign an appropriate Level of Care (LOC) for participation with the Aged and Disabled Waiver Services (ADW) program. Prior to the re-evaluation, the Claimant was assessed at a Level "C" LOC (Exhibit D-4) (19 points) under the program guidelines.
- 2) Brenda Myers, WVMi assessing nurse, completed the Pre-Admission Screening (PAS) assessment (Exhibit D-2), as part of her medical assessment of the Claimant. ----- testified that the Claimant was awarded a total of 13 points which resulted in a Level "B" LOC determination.
- 3) On April 30, 2012, the Claimant was issued a Notice of Decision (Exhibit D-3), which documents the approval of her medical eligibility for the ADW program and the reduction of her homemaker service hours which cannot exceed 93 monthly hours.
- 4) -----, Claimant's Attorney-In-Fact, contends that additional points should have been attributed to the Claimant's LOC in the areas of diagnosis of angina and dyspnea, decubitus, bladder and bowel continence, and orientation.

The following addresses the contested areas:

**Diagnosis of angina and dyspnea**—Testimony indicated that the Claimant has been diagnosed with congestive heart failure and experiences chest pain with shortness of breath. ----- indicated that her mother has been prescribed medications for her congestive heart failure. Ms. Myers testified that during the assessment, she did not observe the Claimant becoming short of breath; however, when questioning the Claimant regarding dyspnea it was indicated “if she talks to [sic] long on the phone she will get sob [short of breath] or if she stay on the go a lot she will have some symptoms [sic].” Ms. Myers indicated that she requested additional information from the Claimant’s physician concerning dyspnea, but received no response to her inquiry. Ms. Myers indicated that the Claimant did not report any symptoms or medications for angina; therefore, she did not award a point for the diagnosis.

**Decubitus**----- indicated that at the time of the assessment her mother had a decubitus ulcer on her “rear”. ----- explained that her mother resided in a nursing home in May 2012, and was being treated for a decubitus. Ms. Myers indicated that the Claimant reported leg sores during the assessment, but denied any pressure point sores or decubitus ulcers. Ms. Myers testified if there was any indication of a decubitus ulcer she would have confirmed the diagnosis with the Claimant’s physician.

**Bladder and Bowel Incontinence**----- indicated that her mother is incontinent, must utilize “poise pads”, and cannot make it from her chair to the restroom without having an accident. ---- -- purported that her mother experiences constipation, due to strong narcotics, and must administer a laxative to aid in her constipation. ----- explained that due to her mother’s lack of education, she over-utilizes the laxative which results in multiple episodes of diarrhea accidents. Ms. Myers documented the Claimant’s report of her incontinence in the assessment as “She states about 4-5 months ago she had 1 or 2 accidents with urine and states it has been at least that long or possibly longer but denies any accidents since that time with urine. She denies any incontinence with bowels and denies use of pads or pull ups.” Ms. Myers indicated that the Claimant’s Homemaker Aide was present at the assessment but offered no contradiction to the reported information from the Claimant.

**Orientation**----- explained that her mother may have known the date during the assessment but would not have known otherwise the purpose of the assessment. In regards to all areas of the PAS, ----- explained that her mother will “tell you what you want to hear” and could not remember any information at the conclusion of the assessment. Ms. Myers indicated that the Claimant was very appropriate with her interactions during the assessment and did not exhibit any cognitive impairment. Ms. Myers noted in the PAS that the Claimant “is alert and oriented x3. She signed and dated the consent without prompting for the date. She verbalized address, DOB [date of birth] and we discussed disorientation and she denies becoming disoriented to person place or time.”

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1(a) and (b) documents there are four levels of care for clients of ADW homemaker services. Points will be determined 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 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- 0-62 range of hours per month
- Level B - 10 points to 17 points-63-93 range of hours per month
- Level C - 18 points to 25 points-94-124 range of hours per month
- Level D - 26 points to 44 points- 125-155 range of hours per month

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.3 F documents:

Nurses shall not render medical diagnoses. In those cases where there is a medical diagnosis question, the decision shall be based on medical evidence presented by appropriate medical professionals.

#### **VIII. CONCLUSIONS OF LAW:**

- 1) Medicaid policy stipulates that an individual's LOC is determined by the number of points awarded on the PAS assessment tool.
- 2) On July 2, 2012, the Claimant was awarded a total of 13 LOC points as part of her PAS assessment, which resulted in a Level "B" LOC determination.

- 3) The matter before the Board of Review is whether or not the WVMi nurse correctly assessed the Claimant based on information relayed during the assessment.
- 4) While the Claimant indicated that she suffered from shortness of breath during the assessment, there was no medical evidence presented to determine a medical diagnosis of dyspnea. Because the assessing nurse cannot render a medical diagnosis, an additional point in the contested area cannot be awarded.
- 5) During the assessment, the Claimant did not report any symptoms or medications related to angina at rest or exertion. Because the assessing nurse cannot render a medical diagnosis, an additional point in the contested area cannot be awarded.
- 6) During the assessment, the Claimant did not report the presence of any decubitus ulcer. Because no information was reported concerning the presence of a decubitus ulcer, the assessing nurse was correct in her decision not to attribute a point in the contested area toward the Claimant's LOC.
- 7) During the assessment, the Claimant did not report any recent episodes of bowel or bladder incontinence. Based on the reported information at the time of the assessment, the assessing nurse was correct to rate the Claimant as continent and additional points in the contested area cannot be awarded to the LOC.
- 8) During the assessment, the Claimant did not demonstrate any cognitive impairment and did not relate any difficulties with her orientation. Based on the information reported at the assessment, the assessing nurse was correct in her decision to rate the Claimant as oriented and additional points in the contested area cannot be awarded to the LOC.
- 9) As a result of evidence presented during the hearing process, no additional points may be attributed to the Claimant's LOC. The Claimant's total points are 13. In accordance with existing policy, an individual with 13 points qualifies as a Level B determination and is therefore eligible to receive a maximum of 93 homemaker service hours.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the Department's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Services program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of October 2012.**

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**Eric L. Phillips**  
**State Hearing Officer**