



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

November 9, 2012

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Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 7, 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 your LOC should not be reduced from a level "C" to a level "B".

It is the decision of the State Hearing Officer to **reverse** 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  
----Care

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

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-2246**

**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 convened on November 7, 2012, 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 a timely appeal, filed July 18, 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  
Kay Ikerd, RN, Bureau of Senior Services (BoSS)  
Lee Ann Beihl, RN, West Virginia Medical Institute (WVMI)

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 6, 2012
- D-3 Notice of Decision dated July 10, 2012
- D-4 Hearing Request dated July 16, 2012
- D-5 Pre-Admission Screening dated May 12, 2011

**VII. FINDINGS OF FACT:**

- 1) On July 6, 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-5) (23 points) under the program guidelines.
- 2) Lee Ann Beihl, WVMI assessing nurse, completed the Pre-Admission Screening (PAS) (Exhibit D-2), as part of her medical evaluation of the Claimant. Ms. Beihl testified that the Claimant was awarded a total of 17 points, which resulted in a Level "B" LOC determination.
- 3) On July 10, 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) The Claimant's Attorney-In-Fact contended that his mother's condition concerning her grooming has not changed since the previous PAS (Exhibit D-5) and she still requires total care assistance. Ms. Beihl assessed the Claimant's grooming ability in the PAS as Level 2, requiring physical assistance; however, upon review of her findings, she confirmed that

Claimant required total care assistance in the functional area and conceded an additional point for grooming.

- 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

#### **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 6, 2012, the Claimant was awarded a total of 17 LOC points as part of her PAS assessment, which resulted in a Level "B" LOC determination.

- 3) Upon review of the PAS, the Department confirmed that the Claimant required total care assistance for grooming and conceded an additional point in the functional area.
- 4) As a result of evidence and testimony presented during the hearing process, one additional point can be attributed to the Claimant's LOC. The Claimant's total points are 18. In accordance with existing policy, an individual with 18 points qualifies as a Level C determination and is, therefore, eligible to receive a maximum of 124 homemaker service hours per month.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** 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 November 2012.**

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