



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Board of Review  
P.O. Box 1736  
Romney, WV 26757

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

Earl Ray Tomblin  
Governor

April 2, 2012

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Dear --- -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 28, 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 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 Level of Care should be reduced from a level "C" to a level "B" Level of Care.

It is the decision of the State Hearing Officer to Uphold the action 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  
Jefferson County Committee on Aging

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

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-463**

**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 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 January 9, 2012.

It should be noted 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

██████████ Case Manager-Jefferson County Committee on Aging

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 December 20, 2011
- D-3 Notice of Decision dated December 29, 2011
- D-4 Pre-Admission Screening dated December 13, 2010

**VII. FINDINGS OF FACT:**

- 1) On December 20, 2011, the Claimant was medically assessed to determine her continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver program. Prior to the re-evaluation, the Claimant was assessed at a Level "C" LOC under the program guidelines.
- 2) On December 29, 2011, the Claimant was issued a Notice of Decision, Exhibit D-3. This exhibit noted that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines, but her corresponding level of care could not exceed 93 hours per month (LOC "B" determination).
- 3) Ms. Lee Ann Beihl-, West Virginia Medical Institute (WVMI) assessing nurse completed Exhibit D-2, the Pre-Admission Screening assessment, hereinafter PAS, as part of her medical assessment of the Claimant. Ms. Beihl testified that the Claimant was awarded a total of 17 points during the evaluation, which qualifies for a Level "B" LOC.

- 4) ---- ----, the Claimant's Attorney-In-Fact contends that additional points should have been awarded in the areas of arthritis and orientation.

The following addresses the contested areas:

**Arthritis**--- ---- stated that her mother has severe arthritis in her hands and leg which has resulted in her leg being bent and requiring the use of a walker. -- ---- indicated that her mother takes turmeric (supplement) for her arthritic condition along with injections in the knees in order to prevent her from taking pain medication. Ms. Beihl noted in the assessment that the Claimant complained of arthritis in the hands, knees and fingers and noted that the Claimant's knuckles and fingers were deformed. Ms. Beihl stated that she did not have a diagnosis of arthritis from the Claimant's physician and there were no arthritis medications prescribed to the Claimant.

Policy requires that the assessing nurse cannot render a medical diagnosis. When a medical diagnosis is questioned, the decision must be based on medical evidence presented by the appropriate medical professionals. Because a diagnosis of the arthritic condition was not presented by the Claimant's physician, the assessing nurse correctly assessed the Claimant's Medical Conditions and Symptoms and an additional point cannot be awarded.

**Orientation** --- ---- stated that her mother's disorientation is "not as bad as in 2010" due to prescribed medications from her physician, but the Claimant still experiences disorientation. Ms. Beihl documented her findings of the Claimant's orientation in assessment as "alert, did not know month until prompted, did not know year, knows family and self, poor memory."

Policy requires that a deficit is awarded in the area of orientation when the individual is totally disoriented to person, place or time or is considered comatose. Information related during the assessment revealed that the Claimant was not totally disoriented; therefore, the assessing nurse correctly assessed the Claimant and an additional point in the contested area cannot be awarded.

- 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 Level of Care (LOC) is determined by the number of points awarded on the Pre-Admission Screening (PAS) assessment tool.
- 2) On December 20, 2011, the Claimant was assessed a total of 17 points as part of her PAS assessment completed by West Virginia Medical Institute.
- 3) As a result of evidence and testimony presented during the hearing process, no additional points may be awarded. The Claimant's total points remain at 17.
- 4) In accordance with existing policy, an individual with 17 points qualifies as a Level "B" LOC and is therefore eligible to receive a maximum of 93 monthly hours of homemaker services.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the Agency's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) 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 April, 2012.**

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