



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Joe Manchin III  
Governor

Patsy Hardy, FACHE, MSN, MBA  
Cabinet Secretary

September 18, 2009

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RE: -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the hearing held July 28, 2009 for -----. Your hearing request was based on the Department of Health and Human Resources' determination of homemaker hours under the Aged and 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.

The Aged and Disabled Waiver (ADW) Program is based on current policy and regulations. One of these regulations specifies that for the ADW Program, the number of homemaker service hours is determined based on the Level of Care. The Level of Care is determined by evaluating the Pre-Admission Screening Form and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units and hours, which is reviewed and approved by the West Virginia Medical Institute. (Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2.1; §501.3.2.2)

The information that was submitted at the hearing revealed that the Department was correct in its determination of the Level of Care and corresponding homemaker hours for -----.

It is the decision of the State Hearing Officer to **uphold** the Department's determination of homemaker hours under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Michael Bevers, Esq., Assistant Attorney General  
Kay Ikerd, BoSS  
Kim Sang, WVMi  
-----, Southwestern Community Action

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1116**

**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 concluded on September 18, 2009 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 July 28, 2009 on a timely appeal, filed April 7, 2009.

It should be noted that benefits have been continued by the Department.

All persons offering testimony were placed under oath.

**II. PROGRAM PURPOSE:**

The 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 Attorney  
-----, Claimant's witness  
-----, Claimant's witness  
Michael Bevers\*, Esq., Assistant Attorney General  
Kay Ikerd\*, Department Representative  
Kathy Gue\*, RN, WVMI

Steve Baisden, State Hearing Officer (observed)

██████████ (observed)

\* Participated by speakerphone.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

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

The question to be decided is whether the Department was correct in its determination of the Claimant's homemaker hours under the Aged and Disabled Waiver Program.

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

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

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

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

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.1.1, 501.3.2, 501.3.2.1, and 501.3.2.2
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services, dated March 9, 2009
- D-3 Notice of Decision dated March 13, 2009

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

- 1) Claimant is a 45-year old male recipient of Aged and Disabled Waiver (ADW) Services for whom a reevaluation of medical eligibility was completed on March 9, 2009 (Exhibit D-2).

- 2) The Department issued a Notice of Decision (Exhibit D-3) to the Claimant on or about March 13, 2009. The notice states, in pertinent part:

**You have been determined medically eligible to continue to receive in-home services** under the Aged and Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 124 hours per month.

- 3) Policy from Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3.2.1, 501.3.2.2, states, in pertinent part:

#### **501.3.2.1 LEVELS OF CARE CRITERIA**

There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

<b>Section</b>	<b>Description of Points</b>
#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 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

**Total number of points possible is 44.**

All of the above levels of care criteria information also applies to Personal Options.

### 503.2.1 LEVELS OF CARE SERVICE LIMITS

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155

- 4) On the March 9, 2009 Pre-Admission Screening, or PAS (Exhibit D-2), the West Virginia Medical Institute (WVMI) RN assessed 24 points for the Claimant. Two points were awarded for medical conditions and symptoms, one for vacating, 19 for functional abilities in the home, one for medication administration, and one for dementia.
- 5) Areas of dispute noted on the Claimant's behalf were *dysphagia*, *eating*, *communication*, and *prognosis*.
- 6) Testimony indicated that the Claimant has trouble swallowing. The WVMI nurse testified that to be awarded a point for the medical condition *dysphagia*, an individual must have a diagnosis from a doctor. She indicated that the Claimant was not diagnosed with *dysphagia*, and had not been tested for his swallowing problem.
- 7) With regard to the functional ability of *eating*, testimony revealed that the Claimant can sometimes eat, but that he needs help, requires reminders to slow down, and has to have his food cut up for him. The Claimant was assessed on his March 9, 2009 PAS (Exhibit D-2) as a Level 2, or requiring physical assistance.
- 8) Testimony from the WVMI nurse regarding the functional ability of *communication* indicated that the Claimant could understand what she said to him, that the Claimant could state his name and respond to simple questions. She testified that the Claimant could not carry on a regular conversation. The Claimant's homemaker testified that the Claimant does not have effective communication. She stated that the Claimant 'carries on,' and that he refers to her as 'mom,' but that he does not know what is going on around him. Testimony from the Claimant himself revealed that he did not know where he was during the hearing.
- 9) With regard to the Claimant's *prognosis*, the WVMI nurse testified that she asked the family if the Claimant's overall condition was improving or declining. She testified that a physician must determine a terminal prognosis.

### VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual's Level of Care for the Aged and Disabled Waiver Program is determined by the number of points assessed on the PAS assessment tool. The Claimant received 24 points on his March 9, 2009 PAS, and was awarded a Level of Care 'C,' with a corresponding 124 monthly service hours. For the higher Level of Care, "D," the Claimant would require at least 26 points.
- 2) Neither the Claimant's *prognosis* nor a diagnosis of *dysphagia* was determined by a physician, as required. Testimony regarding the functional ability of *eating* revealed that the Claimant was assessed correctly as requiring physical assistance, but not total care. No additional points were warranted in these areas.
- 3) Although the Claimant is limited to making simple responses to questions in the area of *communication*, the Department correctly assessed the Claimant in this functional area. Testimony regarding the Claimant's confusion related to his location or the fact that his homemaker is not his mother confirms the finding of the Department on the Claimant's functional ability of *orientation*. The Department correctly assessed the Claimant's functional ability of *communication*, and was correct to award no point.
- 4) With no additional points revealed through evidence or testimony, the Department was correct in its determination of Level of Care and corresponding service hours.

### IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's determination of homemaker hours under the Aged and Disabled 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 September, 2009.**

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**Todd Thornton**  
**State Hearing Officer**