



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

**Joe Manchin III  
Governor**

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

**Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary**

December 21, 2009

-----for -----

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Dear: -----

Attached is a copy of the findings of fact and conclusions of law on your mother's hearing held November 17, 2009. Your mother's hearing request was based on the Department of Health and Human Resources' proposal to reduce her level of care hours from a Level C Level of Care to a Level B Level of 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 and Disabled Waiver Program is based on current policy and regulations. These regulations provide 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 WVMI (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.3).

The information which was submitted at your mother's hearing revealed that while your mother remains medically eligible for participation in the Aged and Disabled Waiver Program, her Level of Care should be reduced from a level "C" to a level "B" Level of Care. As a result, she is eligible to receive 3 hours per day/ 93 hours per month of homemaker services.

It is the decision of the State Hearings Officer to Uphold the proposal of the Department to reduce your mother's homemaker service hours under the Medicaid Title XIX, (HCB) Waiver Services program.

Sincerely,

Eric Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Kay Ikerd, RN BoSS  
[REDACTED] Senior Services

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1881**

**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 December 21, 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 November 17, 2009 on a timely appeal, filed September 17, 2009.

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 Program entitled the Aged and Disabled Waiver program (ADW) is administered by the West Virginia Department of Health & Human Resources. The ADW Program is defined as a long-term care alternative that provide 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:**

----- Smith, Claimant's Representative and Daughter  
-----, Homemaker Aide, (b)(6) Senior Services  
-----, RN, (b)(6) Senior Services  
Cathy Zuspan, RN, BoSS (Participated telephonically)  
Tammy Kessell, WVMi (Participated telephonically)

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 correctly assessed a reduction in the Level of Care homemaker service hours for the Claimant from a Level “C” to a Level “B” Level of Care.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Waiver Policy Manual, chapter 501.3.2.1 and chapter 501.3.2.2

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

**Department’s Exhibits:**

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual, section 501.3.2.1-501.3.2.2
- D-2 Pre-Admission Screening Assessment dated August 28, 2009
- D-3 Notice of Decision Dated September 9, 2009

**Claimants’ Exhibits:**

- C-1 Physician’s records from [REDACTED] Medical Center (It shall be noted that this exhibit was received day of hearing and was not provided to the Department for review.)

**VII. FINDINGS OF FACT:**

- 1) On August 28, 2009, 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 (ADW) program. Prior to the reevaluation, the Claimant was assessed at a Level “C” LOC under the program guidelines.
- 2) On September 9, 2009, the Claimant received 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 would be reduced to ninety-three (93) hours per month (LOC “B” determination)
- 3) The West Virginia Medical Institute (WVMI) nurse completed Exhibit D-2, the Pre-Admission Screening form, as part of her medical assessment of the Claimant. The WVMI nurse testified that the Claimant was awarded a total of fifteen (15) points during the evaluation. The Claimant was awarded the following points as part of the assessment:

Dyspnea-1 point

Mental Disorders – 1 point for Dementia/Alzheimer/Seizures  
Hypertension- 1 Point  
Eating – 1 Point  
Bathing – 1 Point  
Dressing – 1 Point  
Grooming – 1 Point  
Bladder Incontinence- 2 Points  
Orientation – 1 Point  
Transferring- 1 Point  
Walking – 1 Point  
Vacating – 1 Point  
Medication Administration – 1 Point  
Alzheimer Diagnosis- 1 Point

According to Medicaid policy, the assessed points correspond with a LOC rating of Level B (10-17 points); in turn the Claimant is eligible to receive three (3) hours of homemaker services per day or ninety-three (93) hours of services per month.

- 4) The Claimant's representatives contend that additional points should have been awarded in the areas of hearing, walking, transferring, significant arthritis, and pain.

**Hearing-** -----, RN [REDACTED] Senior Services, contended that the Claimant is deaf in her left ear and that her deafness cannot be corrected. ----- [REDACTED] the Claimant's daughter stated that her mother cannot talk on the telephone due to her lack of hearing and it makes it difficult for her mother to communicate with other individuals.

Tammy Kessel, WVMi assessing nursing, testified that the PAS Assessment evaluates the functional abilities of the individual in the home. She testified that if the individual can understand louder voices the incapacity is considered correctable. Ms. Kessel also testified that she communicated verbally with the Claimant during the assessment by speaking in a louder tone.

Although the Claimant is deaf in her left ear the Claimant can still communicate and understand other individuals when a louder tone is utilized. The ability of the Claimant to understand and communicate does not validate a deficit in the health area contested; therefore additional points **cannot** be awarded in the area of hearing.

**Walking-** -----testified that her mother is a 91 year old Alzheimer patient who tries to accomplish tasks on an independent basis. -----indicated that her mother will try to prove to others that she is independent by attempting tasks without seeking assistance. -----also testified that her mother is exhausted after attempting tasks on an individual basis and utilized all of her energy on the day of the assessment. Further testimony from -----indicated that her mother cannot properly walk and can collapse if she does not have assistance. -----, Homemaker Aide [REDACTED] County Senior Services, testified that the Claimant has arthritis in her knees and the Claimant's knee consistently "gives out" on her. Ms. [REDACTED] indicated that she holds on to the Claimant or walks behind the Claimant while the Claimant ambulates throughout the home.

The assessing nurse testified that during the evaluation she asked the individual and her daughter if there were any falls in the home in the last year, and no falls were reported at the

time of the assessment. Ms. Kessel further testified that the Claimant used a four-pronged cane to ambulate and she did not require hands on assistance to ambulate in her surroundings. The Claimant was assessed at a Level II, requiring supervision and an assistive device.

Testimony from the Homemaker Aide revealed that the Claimant requires supervision and some assistance while walking. Information provided at the assessment indicated that the Claimant had not suffered from any falls in the last year. Testimony further revealed that the Claimant does require supervision while ambulating in her surroundings but did not indicate that the Claimant required consistent “hands on” assistance; therefore any additional points **cannot** be awarded in the area of walking.

**Transferring-** Ms. [REDACTED] the Homemaker Aide, testified that she always holds on to the Claimant’s arm to assist her in transferring out of a sitting position. Ms. [REDACTED] testified that the Claimant consistently needs assistance in transferring due to her arthritis and her fragile condition.

Ms. Kessel stated that on the day of the assessment she observed the Claimant using her hands and transferring from a seated position. Ms. Kessel also testified that she questioned the Claimant’s daughter regarding the Claimant’s need for assistance with transferring and she reported that no assistance had been required for around two weeks. The assessing nurse determined through the daughter’s statement that the Claimant is independent in transferring and evaluated the Claimant as a Level II, requiring supervision and an assistive device.

The Claimant was independent in transferring at the time of the assessment and the assessing nurse questioned the Claimant’s daughter regarding her mother’s ability to transfer and received no information to contradict the evaluation that the Claimant can independently transfer; therefore an additional point **cannot** be awarded in the area of transferring.

**Significant arthritis and pain-**The Claimant’s representatives testified that the Claimant suffers from arthritis and pain associated with her condition. The Claimant’s daughter testified that she was prescribed Tramadol for the pain and was removed from this medication as the Claimant’s daughter feared her mother would become addicted to the medication. -----testified that her mother also receives shots in her knees due to arthritic pain. -----submitted records from the Claimant’s physician (Exhibit C-1) dating back to the time of the assessment which indicated the existence of osteoarthritis and pain.

The assessing nurse testified that she did not receive a diagnosis regarding significant arthritis or pain. She testified that she did not receive any information concerning the Claimant’s requirement for prescription medication for pain and could not assess points in the contested area.

Policy stipulates that when medical diagnoses are questioned the assessing nurse must contact the referring physician to clarify all information regarding the diagnosis. Testimony from the Claimant’s daughter revealed that the Claimant does suffer from arthritis and pain associated with her condition. Testimony revealed that the Claimant was prescribed medication for her pain and removed from the medication for a time period due to fear of addiction and other problems associated with the medication. The Claimant’s representative reported to the assessing nurse at the time of the PAS assessment that her mother suffered from arthritis and pain. Testimony from the assessing nurse did not indicate that any clarification was made to

determine the diagnoses and there was no indication listed in the PAS assessment that attempts were made to clarify the diagnoses. Testimony along with the physician's records indicated that the diagnoses exist therefore additional points **can be** awarded in the areas of significant arthritis and pain.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2.1 and 501.3.2.2: There will be 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
- #34 - 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) Medicaid policy dictates 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 August 28, 2009, the Claimant was assessed a total of 15 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, two (2) additional points may be awarded in the areas of significant arthritis and pain. The Claimant was previously awarded fifteen points as part of her August 28, 2009 assessment. Total points awarded to the Claimant stand at seventeen (17).

- 4) In accordance with existing policy, an individual with seventeen (17) points qualifies as a Level "B" LOC and is therefore eligible to receive 3 hours per day or 93 hours per month 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 series hours from a Level "C" to a Level "B" LOC 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 December 2009.**

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**Eric L. Phillips  
State Hearing Officer**