



**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 14, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 2, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker's hours of care from a Level "C" 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 review and approved by WVMI (aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.3).

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. As a result, you are 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 homemaker service hours under the Medicaid Title XIX, (HCB) Waiver Services Program.

Sincerely,

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

cc: Chairman, Board of Review  
Kay Ikerd, BoSS  
[REDACTED] County Council on Aging

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1920**

**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 14, 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 December 2, 2009 on a timely appeal, filed September 23, 2009.

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

**II. PROGRAM PURPOSE:**

The Program entitled the Aged and Disabled Waiver Program is administered by the West Virginia Department of Health & Human Resources. 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

-----, Case Manager, Jefferson County Council on Aging

-----, Homemaker RN, Jefferson County Council on Aging

Kay Ikerd, RN, BoSS (participated telephonically)

Tammy Kessell, RN, 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, 501.3.2.1-501.3.2.2
- D-2 Pre-Admission Screening Form dated September 9, 2009
- D-3 Notice of Decision dated September 17, 2009

**Claimants’ Exhibits:**

- C-1 Assessment from [REDACTED] Home Health (not considered as part of hearing as the assessments were dated October 14, 2009 and related to the Claimant’s current condition)

**VII. FINDINGS OF FACT:**

- 1) On September 9, 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 reevaluation, the Claimant was assessed at a Level “C” LOC under the program guidelines.
- 2) On September 17, 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 program guidelines but her corresponding level of care would be reduced to ninety-three (93) hours per month (LOC “B” determination).
- 3) Tammy Kessel, West Virginia Medical Institute assessing nurse completed Exhibit D-2, the Pre-Admission Screening form, as part of her medical assessment of the Claimant. The WVM

nurse testified that the Claimant was awarded a total of sixteen points during the evaluation. The Claimant was awarded the following points as part of the assessment:

Significant Arthritis-1 point  
Paralysis-1 point  
Pain-1 point  
Diabetes- 1 point  
Mental Disorders-1 point  
Hypertension-1 point  
Decubitis Ulcer-1 point  
Vacating-1 point  
Eating-1 point  
Bathing-1 point  
Dressing-1 point  
Grooming-1 point  
Transferring – 1point  
Walking – 2 points  
Prognosis-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 Case Manager with the [REDACTED] County Council on Aging, contended that additional points should have been awarded in the areas of contractures and dressing.

Contractures-----testified that the Claimant suffers from total paralysis of the right side of her body. She testified that the Claimant's fingers on her right hand are contracted in and that the Claimant has the inability to open her right hand. Ms. Kessel testified that contractures are assessed as a "permanently fixed, locked, or frozen joint". She further indicated that if an individual can open the joint with assistance, the joint is not determined to be permanently locked or frozen. Ms. Kessel's testimony revealed that in order to be awarded points in the area of contractures a diagnosis must be provided by the Claimant's physician and that the Claimant did not report any contractures during the assessment. Ms. Kessel indicated that had she been informed of any contractures during the assessment she would have evaluated the Claimant's condition for any locked or fixed joints and consulted with the Claimant's physician.

In order for points to be awarded points in the area of medical conditions and symptoms, an individual must have a diagnosis of the related condition. In this instance, the Claimant did not report to the assessing nurse that she suffered from contractures and a diagnosis of the condition was not presented to the assessing nurse; therefore additional points in the area of contractures **cannot** be awarded toward the Claimant's level of care determination.

Dressing-----testified that the Claimant suffered from a fall and was placed in rehabilitative services. She indicated that the Claimant's PAS assessment took place after she was recently released from these services. -----stated that the Claimant's condition had improved while she was completing the rehabilitative services but her condition has deteriorated since the assessment. -----testified that the Claimant's paralysis prevents her from dressing herself. She

indicated that the Claimant uses her left leg to manipulate her right leg on a daily basis and she requires total assistance to dress. Ms. Kessel testified that during the assessment the Claimant indicated that she had trouble with buttons, zippers and at times required assistance to get pants pulled up over her feet. Ms. Kessel stated to be allotted the maximum number of points in the area of dressing; an individual must require total care and must lack the functional ability to participate in the area of dressing. Ms. Kessel stated that since the Claimant had some participation in dressing she could only evaluate the Claimant at a Level II, requiring physical assistance.

In order to receive the maximum number of points in the area of dressing, and individual must be evaluated at a Level III (requiring total care). The Claimant's statements during the evaluation indicated that she was able to participate in dressing herself and at times required physical assistance from others. Since the Claimant indicated participation in the functional ability of dressing, the Department was correct in assessing the Claimant as a Level II requiring physical assistance and additional points **cannot** be awarded in the contested area.

- 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) The Claimant was awarded a total of 16 points as part of her PAS assessment completed by WVMJ on September 9, 2009.
- 3) Testimony revealed the deterioration in the Claimant's condition since the assessment of the PAS, dated September 9, 2009. Any testimony or evidence is limited to the September 2009 decision and any ruling is limited to the Claimant's condition at the time of the assessment.
- 4) As a result of evidence presented at the hearing, no additional points may be awarded toward the Claimant's Level of Care. Total points awarded to the Claimant stand at sixteen (16).
- 5) In accordance with existing policy, an individual with sixteen (16) 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 proposal of the Department to reduce the Claimant's Level of Care hours from a Level "C" to a Level "B" Level of Care.

**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**