



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

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

July 5, 2011

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Dear -----

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 14, 2011. 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 WVMH (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 "D" to a level "C" Level of Care. As a result, you are eligible to receive 4 hours per day or 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to Uphold 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, RN, Bureau of Senior Services

-----, [REDACTED]

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

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

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1077**

**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 April 15, 2011.

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 Daughter

-----, Claimant's Daughter-in-Law

-----, Case Manager, 

Kay Ikerd, RN, Bureau of Senior Services (BoSS)

Debbie Sickles, 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 501.3.2.1 and Chapter 501.3.2.2

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

**Department's Exhibits:**

- D-1 Chapter 501.3.2.1 and Chapter 501.3.2.2 Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening dated April 5, 2011
- D-3 Notice of Decision dated April 6, 2011

**VII. FINDINGS OF FACT:**

- 1) On April 5, 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 "D" LOC under the program guidelines.
- 2) On April 6, 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 would be reduced to 124 hours per month (Level "C" determination).
- 3) Ms. Debbie Sickles, 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. Sickles testified that the Claimant was awarded a total of 24 points during the evaluation, which qualifies for a Level "C" LOC.
- 4) The Claimant's representatives contend that additional points should have been awarded in the areas of bowel incontinence, orientation, dressing, grooming, and eating.

**Bowel Incontinence**-The Claimant's representatives contend that the Claimant is totally incontinent, due to her "loose bowels", and must be routinely taken to the restroom every two hours in order to prevent bowel accidents. Testimony indicated that the Claimant would have frequent bowel accidents if not placed in such routine. Ms. Sickles testified that she was informed during the assessment that the Claimant experienced episodes of incontinence less than three times a week and assessed the Claimant as occasionally incontinent.

Testimony revealed that the Claimant's bowel incontinence is managed in order to prevent accidents which result in the elimination of her episodes of incontinence. Testimony revealed

that those present during the assessment reported that the Claimant experiences accidents of the bowel less than three times a week; therefore, the assessing nurse correctly assessed the Claimant as occasionally incontinent and additional points in the contested area cannot be awarded.

**Orientation-** -----, Claimant's daughter stated that the Claimant's orientation varies on a daily basis and she was having a good day on the assessment date. Testimony indicated that at times the Claimant does not recognize her family members, has difficulties remembering her whereabouts and believes that she is still employed. Ms. Sickles documented in the PAS assessment that "Member was unable to give physical address, but was able to tell me her city, and state and DOB. She could not tell me the current month, day or year." Ms. Sickles testified that in order to be rated totally disoriented (Level 3), the individual must be disoriented to person, place and time.

During the assessment, the Claimant was aware of her city, state and date of birth, but had difficulty with her physical address. Testimony indicated that the Claimant was not totally disoriented to person, place, and time; therefore, the assessment of Level 2 Intermittent Disorientation is correct and additional points cannot be awarded in the contested area.

**Dressing-**Ms. ----- testified that the Claimant requires assistance in dressing and cannot dress herself. Testimony indicated that Claimant can stick her arms through her shirt, but cannot pull the shirt down, or put on pants, socks or shoes.

The PAS assessment documents that the Claimant was assessed as a Level 2 requiring physical assistance. While testimony revealed that the Claimant has difficulties in the contested area, she is able to participate in the functional area with limited ability, but does not require total care in the contested area. Therefore, an additional point in the contested area cannot be awarded.

**Grooming-**Testimony indicated that the Claimant cannot properly groom herself and requires assistance. ----- stated that if handed a washcloth, the Claimant will "dab" herself and be finished. Ms. Sickles testified that she performed a range of motion test during the assessment in which the Claimant was able to raise both arms above and behind her head. Ms. Sickles indicated that the Claimant was able to assist with combing her hair, but was unable to "fix" her hair. Ms. Sickles stated that since the Claimant was able to participate in grooming she was assessed as a Level 2 requiring physical assistance.

The PAS assessment documents that the Claimant was assessed as a Level 2, requiring physical assistance. Testimony revealed that the Claimant has a limited ability in the contested area, but is still able to participate in the functional area and does not require total care. Therefore, an additional point in the contested area cannot be awarded.

**Eating-**Testimony indicated that the Claimant's food must be cut up in order to be easily handled. The Claimant's representatives purported that the Claimant will eat a few bites and proclaim that she is full and must be prompted to finish her meal.

Testimony revealed that the Claimant is able to feed herself with prompting and requires assistance in cutting up meats and tough foods. The assessment of Level 2, requiring physical assistance is warranted and additional points in the contested area cannot be awarded.

- 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 April 5, 2011, the Claimant was assessed a total of 24 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 24.

- 4) In accordance with existing policy, an individual with 24 points qualifies as a Level "C" LOC and is therefore eligible to receive 4 hours per day or 124 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 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 July, 2011.**

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