



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

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

November 18, 2011

-----  
-----  
-----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 16, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the 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/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, 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 Services Waiver Policy and Procedures Manual 501.3)

Information submitted at your hearing reveals that you continue to require the degree of care and services necessary to qualify medically for the Aged/Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should be a Level "C" rating. As a result, you are eligible to receive four (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 decrease your Level of Care under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
[REDACTED]

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

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

**Claimant,**

**v.**

**Action Number: 11-BOR-1893**

**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 November 16, 2011 on a timely appeal filed July 26, 2011 and received by the Hearing Officer on September 19, 2011.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community-based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program services as opposed to being institutionalized.

### **III. PARTICIPANTS:**

-----, Claimant's daughter/Homemaker, [REDACTED]  
-----, Homemaker/RN, [REDACTED]  
-----, Case Manager, [REDACTED]  
Kay Ikerd, RN, Bureau of Senior Services  
Courtenay Smith, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

It should be noted that the Claimant was present during the hearing, but was unable to represent herself.

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

The question to be decided is whether the Agency was correct in its proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled Waiver (HCB) Program.

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

Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2

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

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

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) assessment completed on June 27, 2011
- D-3 Notice of Decision dated July 19, 2011

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

- 1) The Claimant, a recipient of Aged/Disabled Waiver (ADW) Medicaid benefits, underwent an annual reevaluation to verify continued medical eligibility for the program.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Courtenay Smith completed a Pre-Admission Screening (PAS) medical assessment (D-2) on June 27, 2011 and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 24 points to documented medical conditions that require nursing services and meets the criteria necessary to

qualify as a Level of Care “C” - eligible for four (4) hours per day or 124 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care “D”- eligible for five (5) hours per day or 155 hours per month of homemaker services.

- 3) The Claimant was sent notification on July 19, 2011 (D-3) advising her of the proposed reduction in homemaker service hours.
- 4) During the hearing, the Claimant’s representatives contended that additional points should be awarded in the following areas:

**Orientation-** -----, Homemaker/Registered Nurse with [REDACTED] testified that the Claimant does not typically engage in conversation, does not always follow direction due to her progressive dementia, and cannot be left alone. Therefore, the Claimant’s representatives requested that she be awarded one (1) additional point for total disorientation.

The WVMi Nurse testified that the Claimant responded to “yes/no” questions during the PAS assessment, and was able to provide her name, birthdate and location. The Claimant could not identify the date, and her daughter indicated that she becomes disoriented about time of day. Based on information provided during the PAS, the Claimant was awarded one (1) point for intermittent disorientation as the WVMi Nurse stated she was not totally disoriented during the assessment.

*No additional point can be awarded for total disorientation because the Claimant was not totally disoriented on the PAS date.*

**Dressing-** The Claimant’s representatives requested that the Claimant be awarded one (1) additional point for total care with dressing. The Claimant’s daughter testified that she has to raise her mother’s arms to put them in shirts, and that her mother’s condition has not improved since the last PAS when she was awarded a Level “D” Level of Care. The representatives indicated that the Claimant must be directed in dressing.

The WVMi Nurse testified that the Claimant was rated as requiring physical assistance with dressing because she was informed the Claimant could put her arms into shirts and her daughter assists with pulling down the shirts. She was told that the Claimant attempts to put on her own clothing, but puts clothes on inside/out. She was also informed that the Claimant has difficulty reaching her feet to put on pants, shoes and socks, and requires assistance with fastening, buttoning and zipping. The Claimant was rated as requiring physical assistance as she could participate in her own dressing to a limited extent.

*As information provided during the PAS indicated that the Claimant could participate to a limited degree in her own dressing, she was rated correctly as requiring physical assistance and no additional point can be awarded.*

**Grooming-** The Claimant’s representatives requested that she be rated as requiring total care with grooming and awarded one (1) additional point in this functional area. The CWWAS

Homemaker/RN testified that the Claimant obsessively picks at her skin and has developed skin infections as a result. She indicated that the only reason the Claimant is given nail polish to paint her fingernails is because polishing redirects her from picking at her skin and inflicting self-injury.

The WVM Nurse testified that she was informed – on the date of the assessment - that the Claimant could remove and place her dentures in a cup, could comb her own hair, and paint her fingernails. She was told that the Claimant's daughter shampoos her hair and cleans her dentures, and that the Claimant sees a podiatrist for foot care. The Claimant cannot brush her gums or rinse her mouth. Therefore, the Claimant was rated as requiring physical assistance with dressing.

*Based on information provided during the PAS, the Claimant was rated correctly as requiring physical assistance with grooming as she was participating in her own grooming to a limited extent.*

The Claimant's daughter testified that the Claimant would be in a nursing home if she did not provide her care. Bureau of Senior Services Registered Nurse Kay Ikerd indicated that the Homemaker/RN could file a request for an increase in Level of Care with information to reflect the Claimant's current condition.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.3.2.1 and 501.3.2.2 (D-1): 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- Decubitis- 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) Policy dictates that an individual's Level of Care for the Aged/Disabled Waiver Program is determined by the number of points obtained on the PAS assessment tool.
- 2) The Claimant was awarded 24 points as the result of a PAS completed by WVMi in June 2011 in conjunction with her annual medical evaluation.
- 3) As a result of information presented during the hearing, no additional points are awarded to the Claimant.
- 4) The Claimant's total number of points remains at 24, rendering her eligible to receive a Level "C" Level of Care.

### **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 18th Day of November, 2011.**

---

**Pamela L. Hinzman**  
**State Hearing Officer**