



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

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

November 23, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 8, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours under the Aged/Disabled Waiver program from Level C to Level B care.

In arriving at a decision, the State Hearings 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. 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 WVM I (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.3

The information submitted at your hearing revealed that you no longer meet the medical criteria required to continue receiving services at Level C care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker hours to Level B care.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau of Senior Services  
West Virginia Medical Institute  
[REDACTED]

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

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

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1939**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondents.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 8, 2011 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 September 14, 2011.

It should be noted here that the Claimant's benefits under the Aged/Disabled Waiver program have continued under Level C care pending a decision.

**II. PROGRAM PURPOSE:**

The program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health and 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, [REDACTED]

Angel Khosa, Bureau of Senior Services

Stephanie Schiefer, RN, West Virginia Medical Institute

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

All participants testified by phone.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department's proposal to reduce Claimant's homemaker hours is correct.

**V. APPLICABLE POLICY:**

Aged/Disabled Waiver Services Policy Manual § 501.3

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

**Department's Exhibits:**

- D-1 Aged/Disabled Waiver Services Policy Manual § 501.3
- D-2 Pre-Admission Screening dated August 29, 2011
- D-3 Notice of Decision dated September 2, 2011

**Claimants' Exhibits:**

- C-1 Correspondence from [REDACTED] dated September 12, 2011
- C-2 Prescription Printout from [REDACTED] Pharmacy

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the ADW program on August 29, 2011. A Pre-Admission Screening (PAS) was completed that date by Stephanie Schiefer, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant was awarded 12 points on the PAS, reducing her homemaker hours from Level C to Level B care.

- 2) -----, Case Manager with [REDACTED] stated they were contesting Claimant not receiving points for pain, dyspnea, dysphagia, contractures and a point for myasthenia gravis.

-----stated Claimant has a diagnosis of myasthenia gravis and should have received a point for “other” under the section for medical conditions/symptoms. Ms. [REDACTED] stated Claimant also has diagnoses of dyspnea and dysphagia, all of which she was only recently able to obtain verification from Claimant’s physician (C-1 and C-2).

-----stated in the PAS documents that Claimant had “obvious contractures”, per the WVMI nurse. The PAS also documents Claimant’s use of the prescription Cymbalta for depression and pain and the use of Aleve, an anti-inflammatory, for her rheumatoid arthritis (D-2).

-----stated she has only recently become Claimant’s case manager and has had difficulty obtaining diagnoses and medical records from Claimant’s previous case management agency and physicians.

- 3) Stephanie Schiefer, RN with WVMI testified to the PAS she completed in August 2011 for Claimant. Ms. Schiefer conceded that Claimant should have been awarded a point for “other” under the section for medical conditions for hypertension based on her prescription for Norvasc for the condition.

Ms. Schiefer stated she cannot give diagnosis as a nurse and without a diagnosis from a physician or a prescription medication for a condition, she cannot award a point. Ms. Schiefer stated Claimant had neither diagnoses nor medications for dyspnea, dysphagia or contractures.

- 4) Aged/Disabled Waiver Services Policy Manual § 501.3.2.1 and 501.3.2.2 states:

- #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
- #35 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. Claimant was awarded 12 points as a result of the PAS completed by WVMI in August 2011 in conjunction with her annual medical evaluation.
- 2) The Department conceded that a point should have been awarded to Claimant for having hypertension. One (1) additional point will be given under *Medical Conditions/Symptoms* for hypertension.
- 3) The August 2011 PAS documents Claimant's use of the prescription Cymbalta for depression and pain and Aleve to treat her rheumatoid arthritis. While Cymbalta can be used to treat both pain and depression, Aleve is an anti-inflammatory that would only be used to treat an inflamed or painful area of the body. Claimant should have been awarded a point for pain based on the use of Aleve for rheumatoid arthritis. One (1) additional point is awarded for pain.
- 4) Claimant failed to present diagnoses of dyspnea and dysphagia to the WVMI nurse at the assessment or the hearing (C-1 and C-2). No additional points can be awarded in these areas without diagnoses or medications. Policy only allows one (1) additional point for "other" under *Medical Conditions/Symptoms*, which has already been awarded for hypertension. No additional points can be awarded for myasthenia gravis.
- 5) With the addition of two (2) points for pain and hypertension, Claimant received 14 points on the August 2011 PAS. Policy requires a minimum of 18 points for Claimant to continue receiving Level C care.

### IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to reduce Claimant's homemaker hours to Level B care. Two (2) additional points for hypertension and pain will be added to Claimant's PAS.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 23<sup>rd</sup> day of November 2011.**

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**Kristi Logan  
State Hearing Officer**