



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

Rocco S. Fucillo  
Cabinet Secretary

August 15, 2012

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

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 8, 2012. 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 Services 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 West Virginia Medical Institute (WVMI) (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual 501.5.1).

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 LOC should be reduced from a level "C" to a level "B".

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-Bureau of Senior Services  
CWVAS

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

**IN RE:     -----,**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1382**

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on August 8, 2012, on a timely appeal, filed May 7, 2012.

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

-----, Claimant's wife

-----, Case Manager-Central West Virginia Aging Services (CWVAS)

-----, Homemaker RN-CWVAS

-----, Homemaker Aide-CWVAS

Kay Ikerd, RN-Bureau of Senior Services (BoSS)-Department representative

Karen Keaton, RN-West Virginia Medical Institute (WVMI)-Department witness

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 501.5.1.1(a) and 501.5.1.1 (b)

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

**Department's Exhibits:**

- D-1 Aged and Disabled Home and Community Based Waiver Policy Manual Chapter 501.5.1.1(a) and 501.5.1.1 (b)
- D-2 Pre-Admission Screening assessment dated April 24, 2012
- D-3 Pre-Admission Screening assessment dated April 26, 2011
- D-4 Notice of Decision dated April 25, 2012

**Claimants' Exhibits:**

- C-1 Letter from -----, M.D. dated May 3, 2012

**VII. FINDINGS OF FACT:**

- 1) On April 24, 2012, the Claimant was medically assessed to determine his continued eligibility and to assign an appropriate Level of Care (LOC) in participation with the Aged and Disabled Waiver Services (ADW) program. Prior to the re-evaluation, the Claimant was assessed at a Level "C" LOC (24 points) (Exhibit D-3) under the program guidelines.
- 2) Karen Keaton, West Virginia Medical Institute (WVMI) assessing nurse, completed the Pre-Admission Screening (PAS) assessment (Exhibit D-2), as part of her medical assessment of the Claimant. Ms. Keaton testified that the Claimant was awarded a total of 14 points which resulted in a Level "B" determination.

- 3) On April 25, 2012, the Claimant was issued a Notice of Decision (Exhibit D-4), which documents the approval of his medical eligibility for the ADW program and the reduction of his homemaker service hours to no more than 93 monthly hours.
- 4) The Claimant and his representatives contend that additional points should have been awarded in the areas of bathing, dressing, wheeling, grooming and the diagnosis of angina at rest and exertion.

The following addresses the contested areas:

**Bathing**-The Claimant was assessed as a Level 2, requiring physical assistance and received one point toward his LOC. Testimony indicated that the Claimant requires total care in the contested area and should receive an additional point toward his LOC. The Claimant's wife, -----, described how she bathes her husband, indicating that he lacks the functional ability to participate in this activity. Ms. Keaton testified that she completed the assessment with the Claimant and his wife and documented the Claimant's bathing ability as "hand held [sic] nozzle in shower. Uses commode chair to sit on in shower, showers 2x/wk, sponges off on other days. Able to wash face and private area." Ms. Keaton indicated that during the assessment she was informed that the Claimant was able to participate in washing his face and private area and did not question his ability due to his "good right hand grip". Ms. Keaton testified that at the conclusion of the assessment, she reviewed her findings with the Claimant and his wife, and neither individual offered any contradiction to her findings. ----- testified that her husband is too proud to admit that he is unable to participate in bathing and indicated that her husband cannot wash his face or private areas due to balance issues in the bathtub.

**Dressing**-The Claimant was assessed as a Level 2, requiring physical assistance and received one point toward his LOC in the contested area. -----, Homemaker RN with CWWAS, contends that the Claimant requires total care in the contested area and should receive an additional point toward his LOC because without assistance from other individuals, the Claimant is unable to dress himself. Ms. Keaton documented in the PAS (Exhibit D-2) the Claimant's abilities related to dressing as "[Claimant] dressed in jogging pants, tee shirt, shoes with velcro closures and socks. Can remove shirt, but unable to put one on. Unable to start pants over feet and pull them up." Ms. Keaton testified that in order to assess an individual as requiring total care, the person must be unable to participate in the functional area. Ms. Keaton testified that the Claimant indicated during the assessment that he was able to remove his shirt and that due to his "good right hand grip" the Claimant should be able to push his arm through a shirt sleeve if held up.

**Wheeling**-The Claimant's representatives presented a letter (Exhibit C-1) from his physician, -----, M.D., dated May 3, 2012, which documents that the Claimant is unable to wheel independently due to his physical limitations. It shall be noted that this exhibit was received by WVMi on May 10, 2012, and was considered late additional information and not evaluated by the assessing nurse. Ms. Keaton documented in the PAS assessment that the Claimant "uses PWC [power wheel chair] 90% of the time in the home" and indicated that the Claimant's

living room area was open and that the Claimant denied any difficulties maneuvering in the area.

**Grooming**-The Claimant was assessed as a Level 2, requiring physical assistance and received one point toward his LOC in the contested area. Testimony indicated that the Claimant requires total care in the contested area and should receive an additional point toward his LOC. ----- indicated that the Claimant is paraplegic and attempts to be independent, but requires total care in most of his activities of daily living. Ms. Keaton documented in the PAS assessment that the Claimant can “perform own oral care, wife cuts nails, able to use electric razor, wife shaves with manual razor.” Ms. Keaton indicated that in order to be assessed at a Level 3, requiring total care, an individual must be unable to participate in the functional activity.

**Diagnosis of angina at rest and exertion**-The Claimant revealed during the assessment that he is prescribed nitroglycerin “just in case”, but has never utilized the prescription and had a nitroglycerin patch removed the previous year due to low blood pressure (Exhibit D-2). ----- opined that nitroglycerin is for emergency purposes and that the Claimant still presents a diagnosis of angina at rest and exertion. Exhibit C-1 documents a diagnosis of angina at rest and exertion; however, this information was considered late and not reviewed by the assessing nurse. Kay Ikerd, RN Bureau of Senior Services, agreed with the assessing nurse’s assessment of the diagnosis of angina at rest and exertion because the Claimant indicated that he had not experienced any symptoms related to angina and has been removed from medication for this diagnosis for the past year.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1(a) and (b) documents there are 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
- #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- 0-62 range of hours per month

Level B - 10 points to 17 points-63-93 range of hours per month

Level C - 18 points to 25 points-94-124 range of hours per  
month

Level D - 26 points to 44 points- 125-155 range of hours per month

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.3 F documents:

Nurses shall not render medical diagnoses. In those cases where there is a medical diagnosis question, the decision shall be based on medical evidence presented by appropriate medical professionals.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Medicaid policy stipulates that an individual's LOC is determined by the number of points awarded on the PAS assessment tool.
- 2) On April 25, 2012, the Claimant was assessed a total of 14 LOC points as part of his PAS assessment, which resulted in a Level "B" determination.
- 3) Policy requires that the maximum number of points is awarded in the area of bathing when the individual is assessed at a Level 3 or higher, meaning total care is required and the individual is unable to participate in the functional activity. The matter before the Board of Review is whether the assessing nurse correctly assessed the Claimant based on information known at the time of the assessment. During the assessment, the Claimant indicated that he was able to participate with bathing by washing his face and private area. Therefore, the assessing nurse correctly assessed the Claimant's bathing ability as a Level 2, requiring physical assistance, and an additional point cannot be attributed toward his LOC.
- 4) Policy requires that the maximum number of points is awarded in the area of dressing when the individual is assessed at a Level 3 or higher, meaning total care is required and the individual is unable to participate in the functional activity. During the assessment, the Claimant indicated that he was unable to put on clothing, but possessed the capacity to remove his shirt. Based on evidence presented at the hearing, it is reasonable to assume that the Claimant lacks the capacity to participate in the functional area of dressing, due to his diagnosis of paraplegia. Therefore, the Claimant should receive an additional point toward his LOC for the functional ability of dressing.

- 5) Policy requires that points are awarded in the areas of wheeling when the individual is assessed at a Level 3 or higher, meaning the individual requires assistance in their wheeling ability. The Claimant utilizes a power wheelchair the majority of the time in his home; however, there was no evidence provided during the assessment which indicated that the Claimant required assistance at the time of the assessment. Therefore, an additional point cannot be attributed toward the Claimant's LOC in the area of wheeling.
- 6) Policy requires that the maximum number of points is awarded in the area of grooming when the individual is assessed at a Level 3 or higher, meaning total care is required and the individual is unable to participate in the functional activity. During the assessment, the Claimant indicated that he was able to perform his own shaving and oral care. While information related during the assessment revealed that the Claimant required additional assistance from caregivers in the area of shaving, the Claimant was still able to participate in the functional activity. Therefore, the assessing nurse correctly assessed the Claimant as a Level 2, requiring physical assistance, and an additional point cannot be attributed toward his LOC.
- 7) Policy requires that the assessing nurse cannot render a medical diagnosis. In the event that a medical diagnosis is questioned, the assessing nurse must make a decision based on medical evidence presented by a physician. During the assessment, the Claimant indicated that he had been removed from a nitroglycerin patch the previous year and did not relate any symptoms associated with angina. While the Claimant indicated he could require nitroglycerin on an emergency basis, there was no information related during the assessment to indicate that the condition persists. In the absence of any symptoms or medications related to a diagnosis of angina, the assessing nurse was correct in her decision not to award a diagnosis in the contested area.
- 8) As a result of evidence presented during the hearing process, one additional point may be attributed to the Claimant's LOC. The Claimant's total points are 15. In accordance with existing policy an individual with 15 points qualifies as a Level B determination and is therefore eligible to receive a maximum of 93 homemaker service hours.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the Department's proposal to reduce the Claimant's homemaker service hours under the Aged/Disabled, Title XIX (HCB) Waiver Services program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED** this \_\_\_\_ day of August 2012.

---

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