



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Earl Ray Tomblin  
Governor

Board of Review  
P.O. Box 1736  
Romney, WV 26757

Rocco S. Fucillo  
Cabinet Secretary

August 27, 2012

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

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 15, 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

-----

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

**IN RE:    -----,**

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1586**

**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 15, 2012, on a timely appeal, filed June 6, 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

-----, Homemaker RN, -----

-----, Claimant's witness

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

Debbie Sickles, 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 May 24, 2012
- D-3 Pre-Admission Screening assessment dated May 9, 2011
- D-4 Notice of Decision dated May 25, 2012

**VII. FINDINGS OF FACT:**

- 1) On May 24, 2012, the Claimant was medically assessed to determine his continued eligibility and to assign an appropriate Level of Care (LOC) for participation with the Aged and Disabled Waiver Services (ADW) program. Prior to the re-evaluation, the Claimant was assessed at a Level "C" LOC (Exhibit D-3) under the program guidelines.
- 2) Debbie Sickles, 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. Sickles testified that the Claimant was awarded a total of 11 points which resulted in a Level "B" LOC determination.
- 3) On May 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 which cannot exceed 93 monthly hours.

- 4) Ms. Sickles testified that she requested additional information regarding the Claimant's diagnoses of angina (rest and exertion), arthritis, contractures, dysphagia and paralysis with the Claimant's physician, but received no response to her inquiry.
- 5) The Claimant contends that additional points should have been awarded in the areas of walking, continence and the diagnosis of contractures.

The following addresses the contested areas:

**Walking**-The Claimant indicated that he was doing "fairly well" in regards to his walking on the day of the assessment, but requires assistance when walking due to the fusion of his spine. -----, RN, -----, indicated that the Claimant experiences paralysis on his right side and pain in his spine and neck which makes it difficult for the Claimant to ambulate. Ms. Sickles assessed the Claimant as a Level 2 (Supervised/Assistive Device) and noted in the PAS (Exhibit D-2) that she observed the Claimant ambulate with his quad cane and that he denied requiring hands on assistance to ambulate in his apartment. Ms. Sickles stated that she reviewed the PAS with the Claimant's son, daughter, and daughter-in-law at the conclusion of the assessment, and there was no objection to the Claimant's ability to ambulate.

**Continence**-The Claimant indicated that he has recently experienced "some" bladder accidents within the last month because he cannot get to the facilities on time. The Claimant indicated that he experiences accidents around "four times a week", but does not utilize any incontinence supplies. During the assessment the Claimant denied any form of incontinence or the use of incontinence supplies. Kay Ikerd, RN-BoSS, testified that the Claimant's recent onset of incontinence cannot be considered as it was experienced after the conducted assessment.

**Contractures**- ----- indicated that the Claimant has a "visually apparent" contracture of the right arm which renders the arm useless. Kay Ikerd, RN-BoSS, indicated that the assessing nurse cannot render a medical diagnosis for medical conditions and symptoms and points are awarded when the individual has a physician's diagnosis or a medical prescription to treat the specific diagnosis.

- 6) 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

- 7) 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 May 24, 2012, the Claimant was awarded a total of 11 LOC points as part of his PAS assessment, which resulted in a Level "B" LOC determination.
- 3) The matter before the Board of Review is whether or not the WVMi nurse correctly assessed the Claimant based on information relayed during the assessment.
- 4) Policy requires that the maximum number of points for walking is awarded when the individual is assessed at a Level 3 or higher, meaning the individual requires hands on physical assistance with their ambulation. During the assessment, the Claimant ambulated with an assistive device and denied the requiring hands on assistance. Because the Claimant did not require hands on assistance at the time of the assessment, an additional point in the contested area cannot be awarded.

- 5) Policy requires that points are awarded for bladder incontinence when the individual is incontinent or experiences occasional incontinence. During the assessment, the Claimant denied any occurrence of bladder incontinence or the use of any incontinence supplies. Because the Claimant was continent at the time of the assessment, an additional point in the contested area cannot be awarded.
- 6) Policy requires that when a Claimant's diagnosis is questioned, a decision is based on medical evidence presented by a physician. Because the assessing nurse could not verify the Claimant's diagnosis of a contracture, an additional point for medical conditions and symptoms could not be awarded.
- 7) As a result of evidence presented during the hearing process, no additional points may be attributed to the Claimant's LOC. The Claimant's total points are 11. In accordance with existing policy, an individual with 11 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**