



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

Rocco S. Fucillo  
Cabinet Secretary

September 20, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 19, 2012. 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 501.5.1.1)

Information submitted at the hearing reveals that your documented medical conditions confirm your Level of Care should be a Level "C" rating. As a result, you are eligible to receive 94-124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to **reverse** 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  
----- County Senior Center

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

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1807**

**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 telephonically on September 19, 2012, on a timely appeal submitted to the Department on July 11, 2012.

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

**II. PROGRAM PURPOSE:**

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's wife  
-----, Case Manager, ----- County Senior Center  
-----, RN, ----- County Senior Center  
Kay Ikerd, RN, Bureau of Senior Services  
Melissa Bell, 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.

**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 Section 501.5.1.1

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 501.5.1.1(a) and 501.5.1.1(b)
- D-2 Pre-Admission Screening (PAS) assessment completed on June 19, 2012
- D-3 Notice of Decision dated June 28, 2012
- D-4 Pre-Admission Screening (PAS) assessment completed on August 3, 2011
- D-5 Letter signed by -----, Certified Nurse Practitioner, on June 25, 2012
- D-6 Letter signed by -----, M.D., on July 13, 2012

**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 and assign an appropriate Level of Care.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Melissa Bell completed a Pre-Admission Screening (PAS) medical assessment (D-2) on June 19, 2012, and determined that the Claimant continues to meet the medical eligibility criteria. The Claimant was assigned 17 points for documented medical conditions that require nursing services and meets the criteria necessary to qualify as a Level of Care "B" - eligible for 63-93 hours per month of homemaker services. It should be noted that the Claimant previously qualified for a Level of Care "C" - eligible for 94-124 hours per month of homemaker services.
- 3) On June 28, 2012, the Department sent the Claimant a Notice of Decision (D-3), advising him of the proposed reduction in homemaker service hours.
- 4) -----, Case Manager with the ----- County Senior Center, testified that the Claimant should have been awarded three (3) additional points for the medical conditions/symptoms of paralysis,

contractures and pain. ----- referred to Exhibit D-6, information from -----, M.D., signed on July 13, 2012, confirming the three diagnoses.

The WVMi Nurse testified that the three symptoms/conditions had been reported during the PAS assessment, and she attempted to confirm the diagnoses via correspondence to ----- (D-5). At the time of the assessment, information had been provided to indicate that ----- is the Claimant's physician; however, ----- is actually a certified nurse practitioner. As ----- is not a physician – and also sent the letter back to the WVMi Nurse with no diagnoses confirmation – the additional points were not awarded.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Sections 501.5.1.1(a) and 501.5.1.1(b) (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- 0-62 hours per month
- Level B- 10 points to 17 points- 63-93 hours per month
- Level C- 18 points to 25 points- 94-124 hours per month
- Level D- 26 points to 44 points- 125-155 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 17 points as the result of a PAS completed by WVMi in June 2012 in conjunction with his annual medical evaluation.
- 3) As a result of information presented during the hearing, three (3) additional points are awarded to the Claimant for the medical conditions of paralysis, contractures and pain. The Claimant reported

these medical conditions on the date of the assessment and the diagnoses have since been confirmed by his physician.

- 4) The Claimant's total number of points is elevated to 20, rendering him eligible to receive a Level "C" Level of Care.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** 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 20th Day of September 2012.**

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**Pamela L. Hinzman  
State Hearing Officer**