



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

January 10, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 6, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker hours from Level D to Level C care.

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. 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 (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 to continue receiving Level D care.

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

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Bureau of Senior Services  
West Virginia Medical Institute  
CCIL

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

**IN RE:**       -----,

**Claimant**

**v.**

**ACTION NO.: 11-BOR-2092**

**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 January 6, 2012 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 16, 2011.

It should be noted here that the Claimant's benefits under the Aged/Disabled Waiver program have continued at Level D 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:**

-----, Case Manager, CCIL

-----, Witness for Claimant

Kay Ikerd, RN, Bureau of Senior Services

Teresa McCallister, RN, West Virginia Medical Institute

Leslie Gibson, West Virginia Medical Institute (observing)

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 § 501.3.2

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

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

- D-1 Aged/Disabled Waiver Services Policy Manual § 501.3.2
- D-2 Pre-Admission Screening dated August 24, 2011
- D-3 Pre-Admission Screening dated September 30, 2010
- D-4 Notice of Decision dated September 1, 2011

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

- 1) Claimant was reevaluated for medical eligibility for the ADW program on August 24, 2011. A Pre-Admission Screening (PAS) was completed that date by Teresa McCallister, RN with the West Virginia Medical Institute (WVMI) (D-2).

Claimant received 25 points on the August 2011 PAS, reducing her level of care from Level D to Level C (D-4).

- 2) -----, Claimant's Case Manager with CCIL, stated they were contesting Claimant not receiving a level 3 for urinary incontinence. ----- stated Claimant's catheter leaks and she should have received an extra point for the leakage.
- 3) -----, Claimant's mother, testified that Claimant's catheter leaks daily. Ms. Anderson stated she changes Claimant's incontinence pads and they are damp every day. ----- stated when she was asked if Claimant's catheter leaked, she thought the WVMI nurse was asking if the catheter leaked 24 hours a day. Ms.

Anderson stated she denied Claimant having leakage from the catheter because it does not leak continuously.

- 4) Kay Ikerd, RN with the Bureau of Senior Services presented Claimant's PAS from the previous year. Claimant had reported catheter leakage in 2010 and was rated a level 3 for urinary incontinence. With the additional point for urinary incontinence given, Claimant had 26 points on her 2010 PAS, equating to a level D care (D-3).
- 5) 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 25 points as the result of a PAS completed by WVMi in August 2011 in conjunction with her annual medical evaluation.

- 2) Claimant failed to disclose leakage from her catheter to the WVMi nurse during the medical assessment. The WVMi nurse awarded Claimant one (1) point for urinary incontinence based on this information. Claimant was correctly assessed as a level 4, having no catheter leakage, based on the information made known to the WVMi nurse at the time of the medical assessment.
- 3) Claimant no longer meets the medical criteria required to continue receiving services at Level D 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 C care.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 10<sup>th</sup> day of January 2012**

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**Kristi Logan**  
**State Hearing Officer**