



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

November 9, 2012

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

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 31, 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  
---- Services of ---- County

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

**IN RE:    ----**,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-2253**

**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 convened on October 31, 2012, 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 convened on a timely appeal, filed September 19, 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  
----, Case Manager-----Services of ---- County  
----, Homemaker Aide-----Services of ---- County  
Kay Ikerd, RN-Bureau of Senior Services (BoSS)  
Lee Ann Beihl, RN-West Virginia Medical Institute (WVMI)

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 dated August 20, 2012
- D-3 Notice of Decision dated September 4, 2012
- D-4 Pre-Admission Screening dated July 15, 2011

**Claimant's Exhibits:**

- C-1 Letter from ----, M.D.

**VII. FINDINGS OF FACT:**

- 1) On August 20, 2012, the Claimant was medically assessed to determine her 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-4) (18 points) under the program guidelines.
- 2) Lee Ann Beihl, WVMi assessing nurse, completed the Pre-Admission Screening (PAS) (Exhibit D-2), as part of her medical evaluation of the Claimant. Ms. Beihl testified that the Claimant was awarded a total of 15 points which resulted in a Level "B" LOC determination.

- 3) On September 4, 2012, the Claimant was issued a Notice of Decision (Exhibit D-3), which documents the approval of her medical eligibility for the ADW program and the reduction of her homemaker service hours which cannot exceed 93 monthly hours.
- 4) The Claimant's representatives contended that additional points should have been attributed to the Claimant's LOC in the areas for diagnoses of arthritis, pain and contractures. ----, Case Manager-----Services, testified that clinical information concerning the Claimant's diagnoses was not presented during the August 2012, PAS assessment; however, the Claimant was evaluated by her physician on October 18, 2012. Ms. ---- presented a letter (Exhibit C-1) from the Claimant's physician which documents in pertinent part:

Upon further review of [Claimant's] care she has had osteoarthritis dating as far back as Feb. 2011. Joint pains [sic] in her legs and arms significantly limits her ability to care for herself. She reports her right foot drop has been for "many years" as part of her MS. All of these conditions existed before the date of her last PAS evaluation of August 20, 2012.

Kay Ikerd, RN, BoSS, objected to the submission of the physician's statement because it was not available to the assessing nurse during the PAS. It shall be noted that this exhibit was entered into the record for historical purposes, but was provided zero weight in the Hearing Officer's decision since it was not available at the time of the assessment.

The following addresses the contested areas:

**Diagnosis of arthritis**-Ms. ---- contends that the Claimant's physician confirmed the diagnosis of osteoarthritis on October 18, 2012. The PAS (Exhibit D-2) documents that the Claimant "states left wrist hurts, no dx [diagnosis] for arthritis."

**Diagnosis of pain**-Upon review of the PAS assessment, Ms. Beihl conceded a point in the contested area. During the assessment, the Claimant reported pain in her left wrist, lower extremities, and multiple joint pain was provided as a diagnosis.

**Diagnosis of contractures**-Ms. ---- contended that the Claimant's diagnosis of a right foot drop met the requirement for a contracture diagnosis. Ms. Ikerd testified that a foot drop does not constitute a contracture and cannot be considered for such diagnosis. The PAS (Exhibit D-2) documents that the Claimant denied any contractures during the assessment.

- 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 August 20, 2012, the Claimant was awarded a total of 15 LOC points as part of her 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) While the Claimant complained of pain in her left wrist, no diagnosis of arthritis was provided during the assessment. Because the assessing nurse cannot render a medical diagnosis, an additional point in the contested area cannot be awarded.
- 5) During the assessment, the Claimant denied any contractures and no diagnosis was provided for the assessing nurse's review. Because no information concerning the diagnosis of contractures was provided at the assessment, an additional point in the contested area cannot be awarded.
- 6) As a result of evidence presented during the hearing process, the Department conceded one additional point in the area of pain diagnosis. Therefore, one additional point may be attributed to the Claimant's LOC. The Claimant's total points are 16. In accordance with existing policy, an individual with 16 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 November 2012.**

---

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