



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

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

May 2, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 2, 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 Level of Care should be reduced from a level "C" to a level "B".

It is the decision of the State Hearing Officer to uphold the action 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, RN-Bureau of Senior Services  
[REDACTED] County Commission on Aging

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

**IN RE:**     -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-826**

**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 a timely appeal, filed February 27, 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  
-----, Claimant's Homemaker Aide- [REDACTED] County Commission on Aging  
-----, Case Manager [REDACTED] County Commission on Aging  
-----, Homemaker RN [REDACTED] County Commission on Aging  
Kay Ikerd, RN-Bureau of Senior Services, Department representative  
Brenda Myers, RN-West Virginia Medical Institute, 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 dated February 6, 2012
- D-3 Notice of Decision dated February 16, 2012
- D-4 Pre-Admission Screening February 15, 2011

**Claimants' Exhibits:**

- C-1 Prescription Pad Note from -----, M.D.

**VII. FINDINGS OF FACT:**

- 1) On February 6, 2012, the Claimant was medically assessed to determine his continued eligibility and to assign an appropriate Level of Care, hereinafter LOC, in participation with the Aged and Disabled Waiver Services program. Prior to the re-evaluation, the Claimant was assessed at a Level "C" LOC under the program guidelines.
- 2) On February 16, 2012, the Claimant was issued Exhibit D-3, Notice of Decision, which documents that the Claimant had been determined medically eligible to continue to receive in-home services under the program guidelines, but his corresponding level of care could not exceed 93 hours per month (LOC "B" determination).

- 3) Brenda Myers, West Virginia Medical Institute (WVMI) assessing nurse, completed Exhibit D-2, the Pre-Admission Screening (PAS) assessment, as part of her medical assessment of the Claimant. Ms. Myers testified that the Claimant was awarded a total of 16 points during the evaluation which qualifies for a Level "B" LOC.
- 4) -----, Case Manager [REDACTED] County Commission on Aging, contends that additional points should have been awarded to the Claimant for diagnoses of Medical Conditions and Symptoms and dressing.

The following addresses the contested areas:

**Medical Conditions and Symptoms**-During the assessment, the Claimant identified concerns with angina at rest and exertion, dysphagia, and arthritis. Ms. Myers testified that the Claimant was awarded points for angina at rest and exertion on his 2010 assessment (Exhibit D-4) because of his previous prescription for nitroglycerin. Ms. Myers documented in the current assessment that the Claimant was not prescribed any medications for the related conditions and she sought confirmation of the diagnoses with the Claimant's physician on February 10, 2012. Ms. Myers stated that she did not receive a response to her inquiry and could not award points for the diagnoses. ----- indicated that she attempted to obtain information concerning the diagnoses from the physician, but did not receive a response in a timely manner. ----- indicated that she received Exhibit C-1, Prescription Pad Note from -----, M.D., on April 16, 2012, which documents the Claimant's diagnoses of angina at rest, dysphagia, and arthritis and that she forwarded the information to WVMI and the Bureau of Senior Services (BoSS) on the same date. Testimony indicated that this information was not considered in the assessment of the Claimant's Level of Care because it was considered late additional information. ----- believed that the Claimant should not be penalized because he was waiting on the information from his physician.

Policy requires that the assessing nurse cannot render a medical diagnosis. When a medical diagnosis is questioned, the decision must be based on medical evidence presented by the appropriate medical professionals. The matter before the Board of Review is whether or not the assessing nurse correctly assessed the Claimant based on information known at the time of the assessment. Because diagnoses of the related medical conditions were not presented by the Claimant's physician in a timely manner, the assessing nurse correctly assessed the Claimant's Medical Conditions and Symptoms and additional points in the contested area cannot be awarded.

**Dressing**-Ms. Myers documented her findings regarding the Claimant's ability to dress as, "He [Claimant] states he dresses himself daily. He states he can put shirts, pants, socks, shoes and belt in [sic] without assistance. He was fully dressed upon my arrival and wearing a white pullover undershirt and a button up flannel long sleeved shirt, jeans, belt and sock and shoes that laced today and tells me that he dressed himself. I asked him if he needs help to get dressed and wife states that he does good with dressing and does it himself." -----, Homemaker RN [REDACTED] County Commission on Aging, indicated that the Claimant requires assistance with dressing; specifically, fastening buttons due to hand tremors. Ms. Myers indicated that the Claimant's 2010 assessment documents that the Claimant reported difficulty

with buttons due to hand tremors, but the Claimant nor his wife indicated that he required any type of assistance with dressing on the current assessment; therefore, she assessed the Claimant as a Level 1, Self/Prompting.

Policy requires that points are assessed in the area of dressing when the individual requires physical assistance to aide in their functional ability. The Claimant did not relate any difficulties concerning his functional ability to dress during the assessment; therefore, the assessing nurse correctly assessed the Claimant and an additional point cannot be awarded in the contested area.

- 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 Level of Care (LOC) is determined by the number of points awarded on the Pre-Admission Screening (PAS) assessment tool.
- 2) On February 6, 2012, the Claimant was assessed a total of 16 points as part of his PAS assessment completed by West Virginia Medical Institute.
- 3) As a result of evidence and testimony presented during the hearing process, no additional points may be awarded. The Claimant's total points remain at 16.
- 4) In accordance with existing policy, an individual with 16 points qualifies as a Level "B" LOC and is therefore eligible to receive a maximum of 93 monthly hours of homemaker services.

**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 May, 2012.**

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