



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 26, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 22, 2005. Your hearing request was based on the Department of Health and Human Resources' (WVMI) action to determine Level C for homemaker hours in the amount of four (4) hours per day or 124 hours per month in the Title XIX Aged/Disabled Waiver Services Program.

In arriving at a decision, the State Hearings 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 and benefit levels for the Aged/Disabled Waiver Services Program are determined based on current regulations. One of these regulations is that there are four levels of care for clients of ADW homemaker services determined from the PS-2000 submitted to West Virginia Medical Institute (Section 570 of Title XIX Aged/Disabled Home and Community Based Services Waiver, Policies and Procedures Manual, 11-1-03).

The information which was submitted at the hearing revealed that you are eligible for Level of Care C which amounts to four (4) hours per day or 124 hours per month.

It is the decision of the State Hearings Officer to uphold the action of the Department (WVMI) to determine Level of Care C in the amount of four (4) hours per day or 124 hours per month in the Title XIX Aged/Disabled Waiver Services Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BOSS
Kim Sang, WVMI
[REDACTED] CWVAS

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

_____,

Claimant,

v. **Action Number:** _____

**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 concluded on July 22, 2005 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 July 22, 2005 on a timely appeal, filed June 30, 2004. It should be noted that the hearing was originally scheduled for October 26, 2004 and June 13, 2005 but was initially continued by the State Hearing Officer _____ who ordered a new PAS-2000 be completed as the previous PAS-2000 was completed by a WVMI R.N. who was no longer employed at WVMI.. The hearing was then rescheduled at claimant's request as she had moved and requested that the hearing be in person at the _____ County DHHR office.

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

II. PROGRAM PURPOSE:

The Program entitled Title XIX Aged/Disabled Wavier Services is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request a waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community based services. The Program's target population is individuals who would otherwise be placed in a skilled nursing facility (if not for the waiver services).

III. PARTICIPANTS:

1. _____, Claimant.
2. _____, Claimant's homemaker.
3. _____ Central WV Aging Services (CWVAS).
4. Kay Ikerd, Bureau for Senior Services (BOSS) (testifying by speaker phone)
5. Kim Sang, WV Medical Institute (WVMI) R. N. (testifying by speaker phone).

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether WVMI took the correct action to determine that the claimant was eligible for Level of Care C in the amount of four (4) hours per day or 124 hours per month.

V. APPLICABLE POLICY:

Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of regulations (5 pages).
- D-2 Copy of hearing request received 6-30-04.
- D-3 Copy of PAS-2000 completed 6-18-04 (5 pages).
- D-4 Copy of notification letter 6-21-04.
- D-5 Copy of reevaluation request 6-1-04 (3 pages).
- D-6 Copy of new PAS-2000 11-29-04 (7 pages).
- D-7 Copy of notification letter 11-30-04.
- D-8 Copy of second hearing request received 12-9-04.

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of Title XIX Aged/Disabled Waiver Services when a reevaluation request was received and a new PAS-2000 was completed by Melanie Kearns of WVMI on 6-18-04 and determined a Level of Care C.
- 2) The claimant requested a hearing on 6-30-04 and a hearing was scheduled for 10-26-04 but was continued as the State Hearing Officer _____ ordered that a new PAS-2000 be completed as Ms. Kearns was no longer employed by WVMI.

- 3) A new PAS-2000 was completed by Kim Sang of WVMI on 11-29-04 and determined Level of Care C and the claimant requested another hearing on 2-9-05 and the hearing was rescheduled for 6-13-05 but was continued as the claimant had changed residence and requested that the hearing be conducted in the [REDACTED] County office.
- 4) The findings of the PAS-2000 dated 11-29-04 were as follows: item #23 included a point for Angina Rest (a), Angina Exertion (b), Dyspnea (c), Significant Arthritis (d), Dysphagia (f), Pain (h), Mental Disorder (k), and other (Edema in ankles) (l) for a total of eight (8) points; item #24 showed no Decubitus present for zero (0) points, item #25 showed that the claimant was unable to physically vacate the building in an emergency for one (1) point, item #26 showed physical assistance needed with Eating (a), Bathing (b), Dressing (c), and Grooming (d) for four (4) points, Bladder Incontinence (e) for two (2) points, Occasional Bowel Incontinence (f) for one (1) point, no Disorientation (g) for zero (0) points, supervised/assistive device needed with Transferring (h) and Walking (i) for one (1) point each, that no Wheelchair (j) was needed in the home for zero (0) points, that Vision (k) and Hearing (l) were impaired but correctable for zero (0) points, that communication was not impaired for zero (0) points, that item #27 (Professional and Technical Needs) included continuous oxygen for one (1) point, that the claimant is capable of administering medications with prompting/supervision (item #28) for one (1) point, that Alzheimer's/dementia was not present (item #34) for zero (0) points, that prognosis was deteriorating (item #35) for zero points, and that the total number of points was 20 which qualified for Level of Care C or four (4) hours per day, 124 hours per month.
- 3) Ms. Sang testified that she reviewed the PAS-2000 with those present and that all agreed with the findings.
- 4) Ms. _____ testified that she washes herself, that she cannot wash her hair, that she can do some dressing, that she wears pads, that she has no dementia, that she can transfer with device, that she needs assistance such as a walker with walking, that she did not use a wheelchair in her previous residence as it was too small, that she has had laser surgery for her vision, that she needs help with medications, and that she has no alzheimers or dementia.
- 5) Ms. [REDACTED] testified that Ms. _____ needs more hours due to poor health.
- 6) The PAS-2000 completed on 2-3-05 showed the following points: item #23-8 points, item #24-0 points, item #25-1 point, item #26 a-1 point, b-1 point, c-1 point, d-1 point, e-2 points, f-1 point, g-0 points, h-1 point, i-1 point, item #27-1 point, item #28-1 point, item #34-0 points. Total of 20 points for Level of Care C.
- 7) There were no areas of dispute with the PAS-2000 completed 11-29-04.
- 8) Policies and Procedures Manual Section 570.1c states, in part

"LEVEL OF CARE CRITERIA

There are four levels of care for clients of ADW Homemaker services. Points will be determined as follows, based on the following sections of the PAS.

- #23 - 1 point for each (can have total of 12 points)
- #24 - 1 point
- #25 - 1 point for B, C, or D
- #26 - Level I - 0 points
- Level II - 1 point for each item A through I
- Level III - 2 points for each item A through M; I (walking) must be equal to or greater than Level III before points given for J (wheeling)
- Level IV - 1 point for A, 1 point for E, 1 point for F, 2 points for G through M

- #27 - 1 point for continuous oxygen
- #28 - 1 point for Level B or C
- #34 - 1 point if Alzheimer's or other dementia
- #35 - 1 point if terminal."

9). Policies and Procedures Manual Section 570.1d states, in part:

"LEVELS OF CARE SERVICE LIMITS

Level	Points Required	Hours Per Day	Hours Per Month
A	5-9	2	62
B	10-17	3	93
C	18-25	4	124
D	26-44	5	155"

VIII. CONCLUSIONS OF LAW:

- 1) Title XIX Aged/Disabled Waiver Policies and Procedures Manual 570.1.c provides the criteria for determining the points awarded for each functional activity of daily living and Section 570.1.d provides the service limits. The claimant qualified for 20 points which translates into Level of Care C and four (4) hours per day and 124 hours per month.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department (WVMI) to determine Level of Care C for four (4) hours per day or 124 hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of July, 2005.

**Thomas M. Smith
State Hearing Officer**