State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 West Washington Street
Charleston, West Virginia 25313
E-mail Address: raywoods@wvdhhr.org

Joe Manchin III
Governor

March 4, 2005

_____
_____
_____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 31, 2004. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your homemaker service hours under the Home and Community Based 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 and benefit levels for Home and Community Based Services are determined based on current regulations. One of these regulations states that the number of homemaker hours for the Aged and Disabled Waiver Program is determined based on your Level of Care. The Level of Care is determined by evaluating the Pre-Admission Screening (PAS) form 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. (WV Provider Manual Chapters 520 and 570.1)

Information submitted at the hearing revealed that you continue to require the degree of care and services necessary to qualify medically for the Aged and Disabled Waiver Program and your documented medical conditions confirm that your Level of Care should remain at a Level C rating. As a result, you are eligible to receive four hours per day or 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to REVERSE the proposal of the Department to reduce your homemaker service hours under the Medicaid Waiver Program.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman - State Board of Review
BOSS
CWVAS, Inc.

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____

ADDRESS: _____

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 4, 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 originally scheduled for July 20, 2004, but was rescheduled at the request of the Claimant and convened on August 31, 2004, on a timely appeal filed April 8, 2004.

It should be noted here that the Claimant is currently receiving Home and Community Based Waiver Benefits.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Home and Community Based Services is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request 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 an intermediate or skilled nursing facility (if not for the waiver services).

III. PARTICIPANTS

_____, Claimant
_____, Homemaker, Special Touch Nursing
[redacted], RN, Special Touch Nursing
[redacted] Case Manager, CWVAS
Linda Wright, RN- Bureau of Senior Services (BOSS), participating telephonically

Presiding at the hearing was Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

Should the Claimant's homemaker service hours be reduced under the Home and Community Based Services Program?

V. APPLICABLE POLICY

WV Provider Manuals Chapters 520.3 (F) MONTHLY RN SERVICES; 570.1.c LEVELS OF CARE CRITERIA; 570.1.d LEVELS OF CARE SERVICE LIMITS; 580.2 MEDICAL ELIGIBILITY REEVALUATION; 580.2.b ANNUAL REEVALUATIONS

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

D-1 Portions of WV Provider Manual Chapters 520, 570 and 580
D-2 WVMI Notice of Decision dated February 3, 2004
D-3 PAS-2000 assessed January 28, 2004

C-1 Letter from [redacted] and homemaker comments

VII. FINDINGS OF FACT

X The Claimant's Aged and Disabled Waiver case was undergoing a medical re-evaluation to verify continued medical eligibility and to determine the appropriate Level of Care. A PAS-2000 was completed on January 28, 2004 (D-3) by WVMI. Points were awarded in the following areas on the PAS-2000:

Question #23
(c.) Dyspnea, 1 point; (d.) Significant Arthritis, 1 point; Pain, 1 point; Diabetes, 1 point; other (Massive Obesity), 1 point **Total = 5**

Question #24
Decubitus, 1 point **Total = 1**

Question #25
In the event of an emergency, the individual can vacate the building, (d) Physically Unable; **Total = 1**

Question #26:
a. Eating - Level 1 **Total = 0**
b. Bathing - Level 2 **Total = 1**
c. Dressing - Level 2 **Total = 1**
d. Grooming - Level 2 **Total = 1**
e. Cont/Bladder - Level 3 **Total = 2**

f. Cont/Bowel - Level 2 **Total = 1**
g. Orientation - Level 2 **Total = 1**
h. Transferring - Level 2 **Total = 1**
I. Walking - Level 2 **Total = 1**
j. Wheeling - Level 1 **Total = 0**
k. Vision - Level 2 **Total = 0**
l. Hearing - Level 1 **Total = 0**
m. Communication - Level 1 **Total = 0**

Question #27
Total = 0

Question #28
The individual is capable of administering his/her own medications: Yes
Total = 0

Question # 34:
Total = 0

Question #35:
Total = 0

The total number of points from the Claimant's PAS-2000 = 16 points = Level B (3 hours per day or 93 hours per month). The Claimant was previously assessed at a Level C (4 hours per day or 124 hours per month).

X On February 3, 2004, a Notice of Decision (D-2) was sent to the Claimant which states the following:

> The West Virginia Medical Institute (WVMI) is the Quality Improvement Organization (QIC) authorized by the Bureau for Medical Services of the West Virginia Department of Health and Human Resources to determine medical necessity for the Aged and Disabled Waiver Program. You have been determined medically eligible to continue to receive in-home services under the Aged and Disabled Waiver Program. The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month.

X Ms. [redacted] testified that the Claimant suffers from additional medical conditions under Question 23 including:

- (a.) Angina at rest, the Claimant is reportedly short of breath and has mild chest pains
- (b.) Angina upon exertion, the Claimant is reportedly short of breath and has moderate chest pains upon exertion
- (k.) Mental Disorder, the Claimant has moderate depression

In addition, Ms. [redacted] stated the Claimant was rated as being capable of independent wheeling under Question 26 j, but has moved to a new apartment and cannot currently utilize her electric wheelchair. The Claimant stated she requires assistance wheeling her manual wheelchair, but is currently using the walker and wheelchair in her apartment. The Claimant and Ms. [redacted] also discussed vision problems the Claimant experiences as a result of cataracts. It

was noted the Claimant requires prompting with medication administration and other individuals must check to ensure correct dosage.

VIII. CONCLUSIONS OF LAW

570 PROGRAM ELIGIBILITY FOR CLIENT

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

A. Be 18 years of age or older.

B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.

C. Be approved as medically eligible for NF Level of Care.

D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.

E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

570.1 MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

570.1.a PURPOSE

The purpose of the medical eligibility review is to ensure the following:

A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short- and long-term service needs.

C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

570.1.b MEDICAL CRITERIA

An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

A. #24: Decubitus - Stage 3 or 4

B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.

C. #26: Functional abilities of individual in the home.

Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)

Bathing - Level 2 or higher (physical assistance or more)

Grooming - Level 2 or higher (physical assistance or more)

Dressing - Level 2 or higher (physical assistance or more)

Continence - Level 3 or higher (must be incontinent)

Orientation - Level 3 or higher (totally disoriented, comatose)

Transfer - Level 3 or higher (one person or two persons assist in the home)

Walking - Level 3 or higher (one person assist in the home)

Wheeling - Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home.)

D. #27: Individual has skilled needs in one or more of these areas - (g) suctioning, (h) tracheostomy, (I) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

E. #28: Individual is not capable of administering his/her own medications.

WV Provider Manual Chapter 520.3 *MONTHLY RN SERVICES*: Functions that **are billable** include:

A. Attend other meetings in addition to the initial assessment and SCP meeting.

B. Make a home visit with the client and HM within 30 days after HM services begin.

C. Complete nursing reassessment and update POC every six months; this must be a face-to-face assessment. Exception: More frequent assessments may be required if the client's needs or medical conditions change; documentation must substantiate the need for additional assessments. RN Assessment (Attachment 9) or Client Contact Form/Recording Log (see Attachments 6 and 7 for samples) may be used as condition warrants.

D. Review and sign the HM worksheets (Attachment 10) to assure services were provided as described in the POC and that client's initials and signature are appropriate.

E. Upon notification that a client has been discharged from an acute care hospital, NF, or other residential setting, complete a nursing reassessment to determine the need for changes in the POC and notify the CMA if additional services or changes in services are needed

F. Compile, prepare, and submit material to the QIO that can be used to assess an ADW client's need for additional HM hours. Additional hours can only be requested for clients at Level of Care A, B, or C. In order to determine whether additional hours are warranted, a completed Prior Authorization Request for Additional Homemaker Hours Form (Attachment 11) must be submitted to the QIO, including clinical documentation sufficient to support the request. Once the request and supporting information is received, the QIO field nurse will arrange within five working days a visit with the client in order to complete a new PAS. A LOC determination will then be established by the QIO. This request may or may not result in a change in the LOC. Notice of this determination will be sent to the client and the HMA. The HMA must notify the appropriate CMA (or client/client representative in the case of Consumer-Directed Case Management) of the results of this process.

G. Be available to the homemaker for consultation and assistance at any time when the homemaker is providing services.

X **WV Provider Manual Chapter 570.1c *LEVELS 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

Total number of points possible is 44.

X **WV Provider Manual Chapter 570.1.d *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

The total number of hours may be used flexibly within the month, but must be justified and documented on the POC. Example: If the POC shows 4 hours/day, Monday-Thursday and 5 hours on Friday, the additional hour on Friday must be justified on POC.

* **WV Provider Manual Chapter 580.2 *MEDICAL ELIGIBILITY REEVALUATION*:**

A medical eligibility reevaluation may include either a periodic or annual reevaluation. The purpose of either of these reevaluations is to confirm and validate an individual's continued medical eligibility for ADW services and to establish whether there is any change in the LOC the individual requires. The client and CMA will be notified of the decision of both periodic and annual reevaluations. The client will receive information describing due process rights should he/she dispute the medical eligibility determination.

X **WV Provider Manual Chapter 580.2.b *ANNUAL REEVALUATIONS*:**

In the event the field nurse determines that a periodic reevaluation is not necessary, the client will be scheduled for an annual reevaluation. All clients must be evaluated at least annually in order to confirm their medical eligibility for continued services and to establish the LOC they require. The reevaluation process is initiated by the CM agency completing and submitting a Medical Necessity Reevaluation Request (Attachment 18). The request can be submitted two months prior to the annual date. However, to avoid disruption of waiver services, it must be received by the QIO at least 15 days prior to expiration of the current approved period to allow processing time.

IX. DECISION

Policy provides that individuals who medically qualify for the Aged and Disabled Waiver Services Program are evaluated and assigned a Level of Care. The Level of Care, A through D, provides the number of homemaker service hours for which the individual is eligible. The Level of Care is determined by reviewing the PAS-2000 and assigning points to qualifying documented medical findings as directed by policy.

The PAS-2000 completed on January 28, 2004 by WVMI reveals the Claimant was awarded 16 points and assigned a Level of Care B rating. Testimony and documentation provided at the hearing supports the assignment of two additional points - based on the conditions of angina at rest and angina upon exertion - for a total of 18 points. This finding changes the Level of Care proposed by the Agency to Level of Care C and the Claimant is eligible to receive four hours per day or 124 hours per month of homemaker services.

It is the decision of the State Hearing Officer to REVERSE the proposal of the Department to reduce homemaker service hours under the Aged and Disabled Waiver Program.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.