

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
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 8, 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 March 8, 2005 on a timely appeal, filed August 18, 2004. It should be noted that this hearing request was received by the State Hearing Officer on November 22, 2004 and originally scheduled for January 4, 2005. The claimant requested the hearing be rescheduled as she was in the hospital. The hearing was rescheduled for March 8, 2005.

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

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

_____, Claimant
_____, Case Manager, CCIL
_____, Homemaker
Judy Bolen, RN, WVMI (By Telephone)
Kay Ikerd, RN, BoSS (By Telephone)

March 11, 2005

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IV. QUESTION(S) TO BE DECIDED:

The question to be decided is whether correct policy and procedures were used in the decision to decrease the number of homemaker service hours the claimant is eligible to receive under the ADW Program.

V. APPLICABLE POLICY:

Section 570.1.a of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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 level of care (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.

Section 580.2 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

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.

Section 580.2.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

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.

Section 570.1.c of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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

Section 570.1.d of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

LEVELS OF CARE SERVICE LIMITS

Total number of points possible is 44.

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.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits

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- Exhibit D-1) Sections 570.1.c, 570.1.d, 580.2, and 580.2.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003
- Exhibit D-2) PAS-2000 dated 06/29/04
- Exhibit D-3) Notification Letter dated 08/09/04
- Exhibit D-4) Hearing Request dated 08/12/04
- Exhibit D-5) Medical Necessity Reevaluation Request dated 06/16/04

Exhibit D-6) Informed Consent and Release of Information Form dated 06/29/04

VII. FINDINGS OF FACT:

- 1) The claimant was notified in a letter dated 08/09/04 that “**You have been determined eligible to receive in-home services** under the Aged and Disabled Waiver Program. The number of homemaker hours approved is based on your medical needs and cannot exceed 124 hours per month.” (Exhibit D-3)
- 2) The claimant had previously been eligible for 155 hours of service per month.
- 3) The claimant requested a hearing on 08/18/04. (Exhibit D-4)
- 4) The PAS-2000 reevaluation was completed on 06/29/04. Present during the evaluation were _____, Homemaker and [REDACTED] Case Manager, CCIL. The claimant was 50 years of age at the time of the evaluation. The primary diagnoses are: DM, HTN, Rhimopathy, ESRD, Lichen Sclerosis Chroni. The secondary diagnoses are Hypothyroidism, Cardiomegly, Depression, Anemia, and FIB. (Exhibit D-2)

5) The information contained in the claimant=s PAS-2000 indicates the following:

Item 23 - 6 items marked	=	6	points
Item 24 - no decubitus	=	0	points
Item 25 - Physically unable to vacate	=	1	point
Item 27 - No professional needs	=	0	points
Item 28 - Unable to self-medicate	=	1	point
Item 34 – No mental disorder	=	0	points
Item 35 - Prognosis-deteriorating	=	0	points
Item 26:			

Level I for items a, g, l & m = 0 points
(eating - self/prompting, oriented, hearing & communication– not impaired)

Level II for items b, c, d, f, & h = 5 points
(Needs physical assistance with bathing, dressing, grooming; and assistive device for transferring)

Level III for items e & k = 4 points
(incontinent bladder & vision – impaired/not correctable)

Level IV for items I and j = 4 points
(2 person assistance for walking and total assistance for wheeling)

Total = 21 points (Level of Care C or 124 hours per month)

- 6) Ms. _____ testified that she does not walk. Ms. [REDACTED] stated that the score given on the PAS is the highest score that can be given
- 7) Ms. _____ testified in regard to bathing the only thing she does do is wash her face. She does need total care below the waist. It takes a long time for her homemaker to do the prosthesis. If she does not have it cleaned everyday, she has problems. Her leg breaks out. The only time she can have the prosthesis off is when her homemaker is there, otherwise she has to have it all at all times to go to the bathroom and transfer.
- 8) Ms. [REDACTED] testified that under the policy, if someone can wash their face, it is considered physical assistance.
- 9) Ms. [REDACTED] testified if the claimant did not have services, her lower body would not get washed. She does need a lot of help with the bathing. She has sores on her abdominal area which have to be cleaned on a daily basis. Nitroglycerin was prescribed for the claimant in January. This was after the evaluation was completed. Her homemaker plan of care shows total care. It is hard for the claimant to answer questions about her care. It is a matter of pride. She needs someone in the home everyday, The claimant has trouble transferring off of the commode.
- 10) Ms. [REDACTED] testified that if an individual has a Stage 3 decubitus, points are given. She saw the sores on the abdomen at the time of the evaluation but they were like little infected places from the injection site. The claimant stated she was able to transfer from the wheelchair to the bed.
- 11) Ms. _____ testified that it is very hard to take someone's pride when answering the questions. She is basically the only support the claimant has. She has sores on the two toes she has left and a sore on her stump since the year she had her prosthesis on in 2000. Her condition is not getting better. The claimant also has sores on her behind which are bedsores. She was treated for those the last time she was in the hospital (in February) and are still there.
- 12) Ms. _____ testified since the evaluation was done, she has had several hospitalizations. She does have someone on call twenty-four hours per day.
- 13) Ms. [REDACTED] pointed out that the claimant's creatin level is at a level 13. It has been at this level for some time. Doctors disagree on whether she should be on dialysis or not.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that there are four levels of care and points will be determined based on information derived from the PAS-2000.
- 2) The PAS-2000 evaluation completed 06/29/04 showed a total of 21 points. This equates to Level of Care C with 124 hours of service per month.
- 3) The claimant was previously approved for Level of Care D in which the points must total between 26 – 44 and equates to 155 hours of service per month.

- 4) Testimony revealed that the claimant has been hospitalized since the evaluation was completed in June. She now has medication for angina and has some sore on her body, She does wash her face but needs help with her lower body. She has trouble transferring on/off the commode; however, she told the WVMI nurse that she could transfer from her wheelchair to her bed.

IX. DECISION:

Based on evidence and testimony provided during the hearing, the State Hearing Officer finds that the Agency has correctly determined the claimant's level of care according to the information found of the PAS-2000 form. Several issues such as the claimant being diagnosed with angina occurred after the form was completed. Testimony presented during the hearing also revealed the claimant has some sores on her body which were not apparent at the time of the review. Even if a point was awarded for decubitus, this would not bring the claimant's total points up to Level of Care D. The Agency is upheld in its proposal to limit the number of homemaker hours to a maximum of 124 hours per month. The action as described in the notification letter dated August 9, 2004 will be taken.

X. RIGHT OF APPEAL:

See Attachments

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

