



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
State Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704
May 17, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 13, 2005. Your hearing request was based on the Department of Health and Human Resources' (WVMI) action to determine level B for homemaker hours in the amount of three (3) hours per day or 93 hours per month in the Title XIX Aged/Disabled Home and Community Based Waiver Services Program case.

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 the Aged/Disabled Home and Community Based Services Waiver 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 PAS-2000 submitted to West Virginia Medical Institute (Aged/Disabled Home and Community-Based Waiver Services, Policy and Procedures Manual, 11-1-03).

The information which was submitted at the hearing revealed that you are eligible for Level of Care B which amounts to three (3) hours per day or 93 hours per month.

It is the decision of the State Hearing Officer to uphold the action of the Department (WVMI) to determine Level B for homemaker hours in the amount of three (3) hours per day or 93 hours per month in the Title XIX Aged/Disabled Home and Community Based Waiver Services Program.

Sincerely,

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

cc: Board of Review
Libby Boggess, BOSS
Kim Sang, WVMI
_____, Central WV Aging Services

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 May 13, 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 convened on May 13, 2005 on a timely appeal filed February 28, 2005.

It should be noted here that any benefits under the Aged/Disabled Home and Community Based Services Waiver Program have been continued pending the results of this hearing. It should also be noted that Libby Boggess from the Bureau for Senior Services (BOSS) and Kim Sang from WV Medical Institute (WVMI) participated in the hearing by speaker phone at the agreement of the claimant.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Aged/Disabled Home and Community Based Services Waiver 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 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's homemaker.
2. _____, Claimant's caregiver.
3. _____, Claimant's landlord.
4. _____, Claimant's friend.
5. _____, Casemanager, Central WV Aging Services.
6. Kim Sang, West Virginia Medical Institute (WVMI) R.N.
7. Libby Boggess, Bureau for Senior Services (BOSS).

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

IV. QUESTION TO BE DECIDED

The question to be decided is whether WVMI took the correct action to determine the claimant's level of care to be level B and number of homemaker hours to be three (3) hours per day or 93 hours per month.

V. APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-1-03.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

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- Exhibit #1 Copy of regulations (5 pages).
" #2 Copy of hearing request received 2-28-05.
" #3 Copy of PAS-2000 reviewed 2-3-05 (5 pages).
" #4 Copy of notice of decision 2-14-05.
" #5 Copy of reevaluation request 1-10-05.

VII. FINDINGS OF FACT

1. The claimant was an active recipient of the Title XIX Aged/Disabled Wavier Services Program (ADW) when a reevaluation of medical eligibility was completed by West Virginia Medical Institute (WVMI) on 2-3-05 (Exhibit #3).

2. A PAS-2000 completed by Kim Sang, R. N. from WVMI, on 2-3-05 determined the claimant to be eligible for Level of Care B which translated to three (3) hours per day or 93 hours per month (Exhibit #3).

3. The findings of the PAS-2000 dated 2-3-05 (Exhibit #3) were as follows: item #23 included Angina Rest, Dyspnea, Significant Arthritis, Dysphagia, Pain, Diabetes, Mental Disorder, and other (HTN/Edema) for a total of eight (8) points, that item #24 showed no decubitus present for zero (0) points, that item #25 showed that the claimant was able physically unable to vacate the building for one (1) point, that item #26 showed eating as self/prompting (a) for zero (0) points, physical assistance needed with bathing (b), dressing (c) and grooming (d) for one (1) point each, that there was incontinence of bladder (e) for two (2) points, that there was occasional bowel incontinence (f) for one (1) point, that there was no disorientation (g) for zero (0) points, that supervised assistance was needed for transferring (h) for one (1) point, that assistive device/supervision was needed with walking (i) for one (1) point, that no wheelchair was needed (j) for zero (0) points, that vision was impaired but correctable for zero (0) points, that hearing (l) was not impaired for zero (0) points, that communication (m) was impaired but understandable for zero (0) points, that there were no professional/technical needs (#27) for which points could be given for zero (0) points, that she is capable of administering medications for zero (0) points, that there was no alzheimer's/dementia or related condition for zero (0) points (item #34), that prognosis was deteriorating for zero (0) points, and that the total number of points was 17 which qualified for Level B care or three (3) hours a day and 93 hours per month.

4. Ms. _____ testified that she cannot cut her meat now and that she has to tear her sausage apart.

5. Ms. _____ testified that Ms. _____ is unable to cut up anything, that she did not understand the question about eating, that she was present during the assessment and went along with what Ms. _____ said but that Ms. _____ later told her she could not cut up her meat and cannot open cans and bottles, that Ms. _____ has angina pains both on exertion and at rest, that prompting and supervision is needed with administering medications, and that she has had numerous falls.

6. Ms. _____ testified that Ms. _____ cannot cut up her meat, that she cannot do for herself at all, that she caught her falling out of the bathtub, that she cannot open bottles at all, that she puts her insulin in her needles, and that she cannot open pill bottles.

7. Ms. _____ testified that Ms. _____'s health has gone downhill and she cannot steady herself.

8. Ms. _____ testified that Ms. _____ has memory loss and may be the start of Alzheimer's.

9. Ms. Sang testified that she was told the last Angina pain was in 2004, that there was no nitroglycerin in the home from 12-21-04 to the date of the assessment, that she was told Ms. _____ took her own medication and gave her own injections, and that the findings of the PAS-2000 were reviewed with the parties present and everyone was in agreement with the findings.

10. PAS-2000 approved 2-3-05 (Exhibit #3) showed the following points: Item #23-8 points, item #24-0 points, item #25-1 point, item #26 a-0 points, b-1 point, c-

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1 point, d-1 point, e-2 points, f-1 point, g-0 point, h-1 point, i-1 point, j-0 points, k-0 points, l-0 points, m-0 points, #27-0 points, #28-0 points, #34-0 points, #35-0 points. Total points-17 for Level B.

Item 23	8	points
"	24	0
"	25	1
"	26	8
"	28	0

11. The areas of dispute for which additional points could be awarded involved

Angina Exertion, eating, and administering medications. The State Hearing Officer finds that the information provided to Ms. Sang on the PAS-2000 on 2-3-05 was accurate on that date. Ms. [REDACTED] testified that she discovered information which was different after the assessment was completed and a new PAS-2000 may be requested if there are any changes in the claimant's condition. However, the State Hearing Officer finds that the information provided on the PAS-2000 on the date of the assessment (2-3-05) was correct and the claimant was properly determined to be eligible for Level of Care B for three (3) hours per day or 93 hours per month.

CONCLUSIONS OF LAW

1. Policies and Procedures Manual, 11-1-03 states, in part, that applicants "must be approved as medically eligible for NF level of care".

2. 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."

3. 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. DECISION

Based upon the evidence and testimony presented, I must uphold the action of the Department (WVMI) to determine Level of Care B which results in three (3) hours per day or 93 hours per month of homemaker hours in the Aged/Disabled Home and Community Based Waiver Services case.

IX. RIGHT OF APPEAL

See Attachment.

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X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

