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

Joe Manchin III
Governor

February 17, 2005

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Dear Mr. ____;

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 27, 2004. Your hearing request was based on the Department of Health and Human Resources' proposal, to deny additional homemaker hours, based upon the PAS-2000 (Medical Evaluation), for 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 in part:

"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. (WV Provider Manual Chapter 520.3 (C) *MONTHLY RN SERVICES).*

The information submitted at the hearing revealed: Your medical evaluation indicates your are receiving the proper homemaker hours.

It is the decision of the State Hearing Officer, to **UPHOLD** the proposal of the Department in determining Mr. ____'s correct Level of Care.

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
Libby Boggess, RN - B o S S
Patrick McKinney, Supervisor - Fayette District DHHR Office
[redacted] Case Manager – 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 February 17, 2005 for Mr. ________.

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 May 21, 2004, on a timely appeal filed February 24, 2004. It was rescheduled for August 6, 2004 at the request of Braley & Thompson. The West Virginia Medical Institute requested to reschedule and the hearing finally convened on August 27, 2004.

It should be noted here that, Mr. ____ is currently receiving Home and Community Based Care Waiver Benefits.

All persons giving testimony were placed under oath. A pre-hearing conference was not held between the parties.

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
* [redacted] Case Manager – Central West Virginia Aging Service, Inc. (CWVAS, Inc.)
* Libby Boggess, RN - Bureau of Senior Services (BoSS)

Karen Keaton, RN/ Associate Director of Review - West Virginia Medical Institute (WVMI)
Judy Bolen, RN/Field Nurse – West Virginia Medical Institute (WVMI)

*Testimony provided by Conference Call.

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

Does Mr. _______ meet the medical eligibility for the current Level of Care, 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

DEPARTMENT'S EXHIBITS:

D-1 WV Provider Manual Chapters 520.3; 570; 570.1.c; 570.1.d; 580.2 & 580.2.b
D-2 WVMI Hearing Summary Sheet
D-3 E-mail from Libby Boggess, RN re: Correct Hearing Issue dated 07/12/04
D-4 Scheduling Notice dated 06/16/04
D-5 Scheduling Notice dated 06/10/04
D-6 Letter to Mr. ____ from State Hearing Officer re: Approved Hours
D-7 PAS-2000 dated 05/24/04
D-8 Scheduling Notice dated 03/18/04
D-9 Hearing Request received 02/24/04 with attachments
D-10 Miscellaneous Communications

CLAIMANT'S EXHIBITS:

C-1 Copy of Mr. ____'s medical records

VII. FINDINGS OF FACT

- Ms. Boggess reviewed the policy found in the WV Provider Manual 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 and; 580.2.b ANNUAL REEVALUATIONS

- WVMI is the Peer Review Organization (PRO) chosen by the Bureau of Senior Services, to review the PAS-2000 and determine Level of Care in the Aged/Disabled Waiver Program.

- Ms. Bolen reviewed Mr. ____'s PAS-2000 assessed on May 24, 2004 in the following manner:

Question #23
(a) Angina Rest; (b) Angina Exertion; (d) Significant Arthritis; (f) Dysphagia; (h) Pain; (j) Contractures and; (l) Other – Pain, CAD----**Total = 7**

Question #24
Decubitus - Yes-----------------------**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 - 2	**Total = 1**	
b. Bathing - 3	**Total = 2**	
c. Dressing – 3	**Total = 2**	
d. Grooming -3	**Total = 2**	
e. Cont/Bladder - 3	**Total = 2**	
f. Cont/Bowel - 2	**Total = 1**	
g. Orientation - 2	**Total = 1**	
h. Transferring - 2	**Total = 1**	
i. Walking - 2	**Total = 1**	
j. Wheeling - 2	**Total = 0**	
k. Vision - 2	**Total = 0**	
l. Hearing - 1	**Total = 0**	
m. Communication – 1	**Total = 0**	**Total = 13**

Question #27
Total = 0

Question #28
The individual is capable of administering his own medications: Prompting/Supervision. **Total = 1**

Question # 34:
Total = 0

Question #35:
Total = 0

The total number of points from Mr. ____'s PAS-2000 = 23 points or Level C (4 hours per day or 124 hours per month).

- The issue on the original hearing request was a "Denial of Medical Eligibility under Aged and Disabled Waiver Program." Ms. Libby Boggess, RN of the Bureau of Senior Services sent a letter to the State Hearing Officer on July 12, 2004. It stated that the issue was for a "Level of Care."

- Braley & Thompson, Inc. advised the State Hearing Officer, by letter dated July 28, 2004 that, Mr. ____' Case Management Agency would change effective August 1, 2004.

- Ms. [redacted] advocated for an additional point for shortness of breath. Mr. ____'s physician diagnosed him with Rheumatoid Arthritis; Coronary Artery Disease; Peripheral Vascular Disease; Hypercholesterolem and; Degenerative Joint Disease.

- Mr. ____ is currently receiving a Level "C" Care.

VIII. CONCLUSIONS OF LAW

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.

- **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.

- **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.

- **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

The WV Provider Manual Chapter 520.3 *(C) MONTHLY RN SERVICES*: Functions that are billable states in part:

"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..."

The PAS assessed on May 24, 2004 was approved for a Level "C" Care. Mr. ____ is currently receiving Level "C" Care during the fair hearing process. In determining if Mr. ____ is entitled to a higher level of care, I must review the supporting documentation.

Based upon the testimony and medical documentation presented during the fair hearing, Mr. ____'s Level of Care was properly documented in the PAS-2000 assessed on May 24, 2004.

It is the decision of this State Hearing Officer, to UPHOLD the proposal of the Department in this particular matter.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29