



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

May 30, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 25, 2006. 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 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-2005 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 B which amounts to three (3) hours per day or 93 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 B in the amount of three (3) hours per day or 93 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
Connie Tetrick, BOSS
_____, WVMI
_____, CCIL

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

____,

Claimant,

v.

Action Number: 06-BOR-1319

**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 May 25, 2006 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 May 25, 2006 on a timely appeal, filed March 2, 2006. It should be noted that the hearing was originally scheduled for May 18, 2006 by telephone conference but was rescheduled at claimant's request in the Mingo 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 Waiver 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 son
3. _____, Claimant's homemaker.
4. _____, Casemanager, CCIL.
5. Connie Tetrick, Bureau for Senior Services (BOSS) (testifying by speaker phone)
6. _____, 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 B in the amount of three (3) hours per day or 93 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 (13 pages).
- D-2 Copy of hearing request received 3-2-06 (2 pages).
- D-3 Copy of PAS-2005 completed 2-9-06 (6 pages).
- D-4 Copy of notification letter 2-16-06.
- D-5 Copy of reevaluation request.

Claimant's Exhibits:

None.

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-2005 was completed by _____ of WVMI on 2-9-06 which determined a Level of Care B.
- 2) The claimant requested a hearing on 3-2-06 and a hearing was convened on 5-25-06.
- 3) The findings of the PAS-2005 dated 2-9-06 resulted in 17 total points which resulted in Level of Care B for three (3) hours per day or 93 hours per month.

- 4) Ms. Tetrick testified about the regulations from the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual.
- 5) Ms. █████ presented her findings from the PAS-2005 completed on 2-9-06 (Exhibit #D-3).
- 6) Ms. █████ testified that the claimant is incontinent and the homemaker has to clean up, that she does not know if the claimant is ever totally oriented, that the claimant would be mentally unable to vacate the building, and that she disagrees with the regulations.
- 7) Ms. █████ testified that the claimant is incontinent of bladder and bowel, that she is scared to go to the bathroom, that she will use the potty chair if someone takes her but will not alone, that she would panic in an emergency and not be able to vacate the building, and that she cannot distinguish between wet and cold.
- 8) Mr. ____ testified that the doctor says his mother is incompetent and that she has had two (2) nervous breakdowns.
- 9) Ms. █████ testified that the claimant did not answer any questions during the assessment and had some confusion about time but was oriented to person, that she was assessed as intermittent disorientation, that she was not totally incontinent and was assessed as less than total incontinence as the homemaker indicated that she uses the bed side commode (BSC).
- 10) The PAS-2005 completed on 2-9-06 showed the following points: item #23-3 points, item #24-0 points, item #25 a-1 point, b-2 points, c-2 points, d-2 points, e-1 point, f-1 point, g-1 point, h-1 point, i-1 point, j-0 points, item #26-1 point, #27-0 points, item #33-1 point, item #34-0 points, vacating the building 0-points. Total of 17 points for Level of Care B.
- 11) Policies and Procedures Manual Section 570.1,c states, in part

"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) Medical Condition

#24 - 1 point Decubitus

#25 - Level I - 0 points Functional levels

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

#26 - 1 point for continuous oxygen

#27 - 1 point for "No" answer-medical administration

#33 - 1 point if Alzheimer's or other dementia

#34 - 1 point if terminal."

Total number of points possible is 44."

12). Policies and Procedures Manual Section 570.1.d 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"

13) The areas of dispute involved incontinence of bladder and bowel (items #25 e & f), orientation (item #25 g), and ability to vacate the building. In regard to incontinence of bladder and bowel, the State Hearing Officer finds that the claimant is not totally incontinent as does use the BSC for bladder and bowel function some of the time. Therefore, an additional point cannot be awarded in the area of incontinence of bladder and bowel. In the area of orientation, the State Hearing Officer finds that the claimant has intermittent disorientation but is not totally disoriented. Therefore, an additional point cannot be awarded in the area of orientation. In the area of vacating the building, the State Hearing Officer finds that the claimant was awarded a Level II finding in the areas of walking and orientation and the regulations require a Level III finding in one of those areas in order to receive a point in the area of vacating the building. Therefore, an additional point cannot be awarded in the area of vacating the building.

VIII. CONCLUSIONS OF LAW:

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 17 points which translates into Level of Care B and three (3) hours per day and 93 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 B for three (3) hours per day or 93 hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of May, 2006.

**Thomas M. Smith
State Hearing Officer**