



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 17, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 16, 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  
Brian Holstine, BOSS  
\_\_\_\_\_, WVMI  
\_\_\_\_\_, CCIL  
\_\_\_\_\_, Kanawha Home Health

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

\_\_\_\_,

**Claimant,**

v.

**Action Number: 06-BOR-1324**

**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 16, 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 16, 2006 on a timely appeal, filed March 1, 2006.

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 Wavier 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. [REDACTED], Claimant.
2. [REDACTED], Kanawha Home Health.
3. [REDACTED], Casemanager, CCIL.
4. [REDACTED], Claimant's homemaker.
5. Brian Holstine, Bureau for Senior Services (BOSS) (testifying by speaker phone)
6. [REDACTED], 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 3-1-06 (2 pages).
- D-3 Copy of PAS-2005 completed 2-14-06 (7 pages).
- D-4 Copy of notification letter 2-17-06.
- D-5 Copy of reevaluation request.

**Claimant's Exhibits:**

#Cl-1 Written statement from claimant.

**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 [REDACTED] of WVMI on 2-14-06 which determined a Level of Care B.
- 2) The claimant requested a hearing on 3-1-06 and a hearing was convened on 5-16-06.
- 3) The findings of the PAS-2005 dated 2-14-06 resulted in 16 total points which resulted in Level of Care B for three (3) hours per day or 93 hours per month.

- 4) Mr. Holstine testified about the regulations from the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual.
- 5) Ms. [REDACTED] presented her findings from the PAS-2005 completed on 2-14-06 (Exhibit #D-3) and testified that she reviewed the PAS-2005 with those present including the claimant and her homemaker and that all agreed with the findings.
- 6) Ms. [REDACTED] testified that she started on the ADW Program in June, 2000 and received 93 hours per month of homemaker services, that she used a cane and walker at the time, that she was awarded 124 hours per month in February, 2003, that she was given an electric wheelchair in August, 2004, that she is now totally dependent, that she has more bladder and bowel accidents, that she can no longer use a cane or walker, that her neighbor sets up her medications on Fridays and if she drops any on the floor, she has to call someone to pick them up, that she will end up bedridden if her hours are cut, and that it is difficult to tell a person that she has bladder and bowel accidents daily.
- 7) Ms. [REDACTED] testified that she disagreed with the findings of the PAS-2005 in the areas of item #23a (angina at rest), item #23e (paralysis, as the claimant's right leg is paralyzed and she cannot walk), item #23f (dysphagia, as the claimant has trouble swallowing,), item #25 e and f (bladder and bowel incontinence, as the claimant is incontinent of both daily), and item #25h (transferring, as the claimant needs one-person assistance), that she thinks the claimant should be awarded six (6) more points which would take her to Level of Care C which is what she had before.
- 8) Ms. [REDACTED] testified that there was no diagnosis of angina, paralysis or dysphagia from the doctor on the evaluation request (Exhibit #D-5) and that the claimant takes no medication for angina so she could not award a point in those areas, that the claimant denied having dysphagia and she always asks if the person has difficulty with swallowing, that a neighbor sets up her medications and a point could not be awarded for that area as the medication does not have to be placed in her hand or mouth at all times, that the claimant told her the bladder incontinence occurred 2-3 times a week and bowel incontinence sometimes and it must be total incontinence to receive another point in those areas, and that the claimant stated that she pushes off the arms of her chair to transfer and did not require one-person assistance at all times and another point could not be given for that area.
- 9) The PAS-2005 completed on 2-14-06 showed the following points: item #23-4 points, item #24-0 points, item #25 a-1 point, b-1 point, c-1 point, d-1 point, e-1 point, f-1 point, g-0 points, h-1 point, i-2 points, j-2 points, item #26-0 points, #27-0 points, t, item #33-0 points, item #34-0 points, vacating the building 1-point. Total of 16 points for Level of Care B.
- 10) The areas of dispute with the findings of the PAS-2005 for which additional points could be awarded included angina at rest, paralysis, dysphagia, continence of bladder and bowel, medication administration, and transferring. The State Hearing Officer finds that a point cannot be awarded for angina at rest (item #23a) and dysphagia (item 23f) as there is no diagnosis listed or medication being taken for either and the claimant denied having either during the assessment. The State Hearing Officer finds that a point cannot be awarded for paralysis (item 25 e) as the claimant was diagnosed with MS (Multiple Sclerosis) and the physician did not include paralysis as a diagnosis. The State Hearing Officer researched

Dorlan's Illustrated Medical Dictionary, 25<sup>th</sup> Edition and determined that the symptoms of MS include weakness, incoordination, paresthesias (defined as an abnormal sensation, burning, prickling, formication), speech disturbances, and visual complaints) and the symptoms did not include paralysis. The State Hearing Officer finds that an additional point cannot be awarded for bladder or bowel incontinence (items #25e and f respectively) as the claimant reported bladder incontinence 2-3 times a week and bowel incontinence as very seldom. In order to receive a Level III finding for bladder and bowel incontinence, the incontinence must be at all times. The State Hearing Officer finds that a point cannot be awarded for medication administration as there was no testimony from any party that the medications must be placed in the claimant's hand or mouth at all times. The claimant testified only that if she dropped her pills, she had to call someone to pick them up for her as she could not do so. The State Hearing Officer finds that the claimant requires one-person assistance with transferring at times. Ms. [REDACTED] reported in her assessment that the claimant can transfer to her bed by pushing on the arms of the wheelchair but that the homemaker assists her with transferring when she is present. Ms. [REDACTED] testified that one-person assistance must be required at all times in order to receive a finding of Level III but the regulations contained in Exhibit #D-1 do not state that the requirement must be at all times. The State Hearing Officer is awarding a Level III finding for the area of transferring and an additional point is awarded to the claimant. The State Hearing Officer finds that the claimant has a total of 17 points which translates to Level of Care B for three (3) hours per day or 93 hours per month.

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"

**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 17th Day of May, 2006.**

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**Thomas M. Smith  
State Hearing Officer**