State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354

Martha Yeager Walker
Secretary

January 13, 2006

_____
_____
_____

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 9, 2005. Your hearing request was based on the Department of Health and Human Resources' determination concerning Level of Care (monthly hours of care services) under the Medicaid Title XIX (Home & Community-Based) Waiver 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.

One of these regulations specifies that for the Aged/Disabled Waiver Program, hours of service are determined based on an evaluation of the Pre-Admission Screening Form (PAS). A Level of Care is determined by a point system. Points are derived from medical conditions and deficits set forth in the PAS. Program services are limited to a maximum number of units/hours that are determined by the PAS which is completed, reviewed and approved by WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual § 570.1-570.1. d)

The information submitted at the hearing revealed that as a result of your most recent medical evaluation (PAS), the agency determined your point total as 16 or a B Level of Care (93 hours maximum per month). Evidence offered failed to establish any additional points.

It is the decision of the State Hearing Officer to **uphold** the Agency's determination as set forth in the August 22, 2005 notification. Evidence reveals that as of the date of the August 15 2005 evaluation you to qualified for a B Level *of Care.*

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Boggess, RN, Bureau of Senior Services (BoSS)
[redacted] West Virginia Medical Institute (WVMI)

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Claimant,

Action Number 05-BOR- 6563

v.

West Virginia Department of Health and Human Resources,
Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on January 11, 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 November 9, 2005 on a timely appeal received by the Bureau for Medical Services September 1, 2005 and by the Board of Review September 23, 2005.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) 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 an intermediate or skilled nursing facility (if not for the waiver services).
Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

III. PARTICIPANTS:

_____, claimant
_____, daughter to claimant
_____, daughter to claimant
[redacted], homemaker
[redacted] CM, [redacted] Senior Center
Kay Ikerd, RN, BoSS (by phone)
[redacted], RN, WVMI (by phone)
Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the agency was correct in their determination concerning Level of Care (hours of care) under the Medicaid Title XIX Waiver (HCB) Program?

V. APPLICABLE POLICY:

Aged/Disabled and Community-Based Services Waiver Policy Manual § 570.1- 570.1, d.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1 A/D Waiver Manual § 570.1, c and 520.2- 3 and 580- 580.3
E-2 Medicaid Program Instruction MA-04-61, 11/1/04
E-3 WVMI Independent Review (PAS) completed 8/15/05
E-4 Notification, 8/22/05
C-1 Additional Info. Supplied by CMA including a statement from Dr. [redacted] 9/2/05p

VII. FINDINGS OF FACT:

1) The claimant is an active recipient of Aged/Disabled Home and Community-Based Waiver Services. As a result of an annual evaluation (E-3) completed by WVMI on August 15, 2005, WVMI determined the claimant's Level of Care to be B or 93 hours monthly- a reduction from level C. The agency provided notification to the claimant of the reduction in hours August 22, 2005 (E-4). The claimant requested a hearing in a request dated August 29, 2005. This hearing was convened November 9, 2005. It is noted that services under the Medicaid Title XIX Waiver (HCB) Program have continued at the previous level.

2) Exhibits as noted in Section VI above were presented.

3) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.

4) Based on the medical evaluation of August 15, 2005 and testimony of the WVMI nurse, the Agency acknowledged a total of 16 points in determining a "Level of Care". The claimant was awarded 1 point each in the categories of transferring and walking (supervised/assistive device). Wheeling was noted as (3) – situational assistance.

5) Testimony provided on behalf of the claimant reveals that the claimant is 87 years of age. Some ambulation limitations were noted. There are times when she requires personal assistance or wheelchair. Certain foods must be cut up for her.

6) From the Aged/Disabled Home and Community-Based Waiver Manual 570.1:
There will be 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).
* In the category of incontinence, the standard to establish occasional from total incontinence is determined by frequency- less that 3 times per week being occasional and more than 3 being total.
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 allowable is 44.

LEVELS OF CARE SERVICE LIMITS
Level A - 5 points to 9 points-2 hours per day or 62 hours per month
Level B - 10 points to 17 points-3 hours per day or 93 hours per month
Level C - 18 points to 25 points-4 hours per day or 124 hours per month
Level D - 26 points to 44 points-5 hours per day or 155 hours per month

VIII. CONCLUSIONS OF LAW:

1) Policy requires a specific number and degree of functional deficits for the assignment of points to arrive at the *Level of Care*. The claimant was awarded a total of 16 points by the agency based on the evaluation of August 15, 2005, which resulted in a B *Level of Care*.
2) Directives provide that in Section 26 of the medical evaluation, under the categories of

walking and transferring 1 point is awarded for use of an assistive device and 2 points if personal assistance is necessary. The agency awarded one (1) point in each category. Evidence failed to establish that the claimant's need for personal assistance was more than occasional. The awarding of 1 point each in walking and transferring is appropriate based on submitted evidence.

3) Policy requires a minimum total of 18 points to qualify for a care level of C. The agency acknowledged a total of 16 points and evidence offered during the hearing failed to establish additional points. A total of 16 points results in a B level of care (a maximum of 93 hours per month).

IX. DECISION:

The Agency's determination as set forth in the August 22, 2005 notification is **upheld.** The claimant qualifies for a B *Level of Care*.

Testimony as to walking and transferring, intended to establish additional points, was unconvincing. The WVMI evaluator's notes and testimony indicate that the claimant was could fully ambulate with an assistive device- walker- at the time of the evaluation. On the basis of evidence provided, it appears that the claimant demonstrated ambulation abilities commensurate with the rating provided in the evaluation.

The claimant and the case management agency are reminded that should the claimant's care needs increase; a request process is in place to provide additional hours of care.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

Entered this 13th Day of January, 2006.

RON ANGLIN
State Hearing Examiner