



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

February 22, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 17, 2006. Your hearing request was based on the Department of Health and Human Resources' (WVMI) action to determine Level C for homemaker hours in the amount of four (4) hours per day or 124 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 C which amounts to four (4) hours per day or 124 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 C in the amount of four (4) hours per day or 124 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
Kay Ikerd, BOSS
[REDACTED] WVMI
[REDACTED] CWVAS
_____, Claimant's POA

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

_____,

Claimant,

v.

Action Number: 05-BOR-7092

**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 February 17, 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 February 17, 2006 on a timely appeal, filed December 7, 2005.

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. _____, Claimant.

2. _____, Claimant's POA.
3. _____, Claimant's daughter-in-law.
4. _____, Claimant's homemaker.
5. _____ Central WV Aging Services (CWVAS).
6. Kay Ikerd, Bureau for Senior Services (BOSS) (testifying by speaker phone)
7. _____, 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 C in the amount of four (4) hours per day or 124 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 (11 pages).
- D-2 Copy of hearing request received 12-7-05 (2 pages).
- D-3 Copy of PAS-2000 completed 11-16-05 (5 pages).
- D-4 Copy of notification letter 12-2-05.
- D-5 Copy of reevaluation request 10-20-05.
- D-6 Copy of appointment letter for PAS.

Claimant's Exhibits:

Cl-1 Copy of letter from _____ M.D. dated 2-15-06 (objected to by Ms. Ikerd as not provided during the two (2) week potential denial letter period and not relevant as to the condition of the claimant at the time of the completion of the PAS-2005. Objection was upheld and the document is not admissible as evidence).

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 11-16-05 which determined a Level of Care C.
- 2) The claimant requested a hearing on 12-7-05 and a hearing was convened on 2-17-06.

- 3) The findings of the PAS-2005 dated 11-16-05 resulted in 21 total points which resulted in Level of Care C for four (4) hours per day or 124 hours per month.
- 4) Ms. [REDACTED] testified that she reviewed the PAS-2005 with those present, including the claimant, Mr. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] and that all agreed with the findings.
- 5) Mr. [REDACTED] testified that the claimant has no control over her bowels, that they take her to the bathroom on a regular basis but she has no idea when she needs to go, that she doesn't want to tell people about it, that he was wrong in the information on that subject that he gave to Ms. [REDACTED] that she is combative and suicidal, that she does have dementia and is disoriented, that blisters come up, that she does not use a wheelchair in the home as they try to use the walker instead and let her do things as much as possible without having to use the wheelchair.
- 6) Ms. [REDACTED] testified that the claimant does have bowel incontinence and does have dementia although it was not on the form the doctor completed.
- 7) The PAS-2005 completed on 11-6-05 showed the following points: item #23-8 points, item #24-0 points, item #25 a-1 point, b-1 point, c-1 point, d-1 point, e-2 points, f-1 point, g-1 point, h-2 points, i-2 points, item #26-0 points, #27-1 point, t, item #33-0 points, item #34-0 points. Total of 21 points for Level of Care C.
- 8) The areas of dispute with the findings of the PAS-2005 for which additional points can be awarded included decubitus, bowel incontinence, and dementia. Mr. [REDACTED] testified that the claimant has blisters which come up but no pressure or ulcer sores were reported to Ms. [REDACTED] on 11-16-05 and an additional point cannot be awarded for decubitus. Mr. [REDACTED] testified that the bowel incontinence was total but the information given to Ms. [REDACTED] for the PAS-2005 was that the incontinence was occasional and not total. The awarding of only one (1) point for bowel incontinence was correct according to information given at the time of the completion of the PAS-2005 and no additional point can be awarded. In regard to dementia, there was no diagnosis or medications being taken for dementia and an additional point cannot be awarded for that item. Therefore, no additional points can be awarded and the finding by Ms. [REDACTED] of 21 points was correct based on the information given to her by the participants on 11-16-05.
- 9). 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."

10). 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 21 points which translates into Level of Care C and four (4) hours per day and 124 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 C for four (4) hours per day or 124 hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of February, 2006.

Thomas M. Smith
State Hearing Officer