



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 27, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 23, 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  
Libby Bogges, BOSS  
[REDACTED] WVMI  
[REDACTED], CCIL

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-7262**

**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 23, 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 23, 2006 on a timely appeal, filed January 3, 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 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. [REDACTED], Claimant's homemaker.
3. [REDACTED] Casemanager, CCIL.
4. Libby Boggess, Bureau for Senior Services (BOSS) (testifying by speaker phone)
5. [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 1-3-06 (2 pages).
- D-3 Copy of PAS-2005 completed 11-17-05 (7 pages).
- D-4 Copy of notification letter 12-8-05.
- D-5 Copy of reevaluation request (3 pages).
- D-6 Copy of appointment letter for PAS.

##### **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 [REDACTED] of WVMI on 11-17-05 which determined a Level of Care B.
- 2) The claimant requested a hearing on 1-3-06 and a hearing was convened on 2-23-06.
- 3) The findings of the PAS-2005 dated 11-17-05 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. Boggess 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 11-17-05 (Exhibit #D-3) and testified that she reviewed the PAS-2005 with those present, including the claimant and █████, and that all agreed with the findings.
- 6) Ms. \_\_\_\_\_ testified that she told Ms. █████ that she has to have help with medications, that she forgets to take them, that she told Ms. █████ she could probably get out of her residence if she had to but might hurt herself, that she thought dysphasia was something like Alzheimer's, that she gets choked easily she has a hiatal hernia.
- 7) Ms. █████ testified that Ms. █████ told her that she was finished taking information for the PAS-2005 so she left and found out later that Ms. █████ asked more questions, that Ms. \_\_\_\_\_ cannot take her medications as she cannot open the pill bottles or read the labels, that Ms. \_\_\_\_\_ says she has trouble swallowing, that item 32 f is marked for disorientation but item 25 g is marked that Ms. \_\_\_\_\_ is oriented.
- 8) Ms. █████ testified that Ms. \_\_\_\_\_ cannot read the pill bottles, that she assists with all medications, that Ms. \_\_\_\_\_ will call her and ask her about the pills, that she sometimes hands the pills to her, and that she has complained about swallowing.
- 9) Ms. Boggess testified that a point can only be given for medication administration if the individual must have the medication placed in her hand, mouth, tube or eye by someone other than the recipient at all times and that a point can only be given for dysphagia if there is a diagnosis listed for it or if medication is being taken for it and neither was the case for Ms. \_\_\_\_\_.
- 10) Ms. █████ testified that she marked Ms. \_\_\_\_\_ as oriented under section 25 g since she was alert and oriented times 3 on the day of her visit and only had occasional confusion and item 32 f was marked disoriented as the question was whether there was any disorientation during the past 2 years, that she asks the individual whether they have any trouble swallowing when she is asking about dysphagia, that she noted that Ms. \_\_\_\_\_ does have occasional difficulty swallowing but there was no diagnosis listed for it so a point could not be awarded.
- 11) The PAS-2005 completed on 11-17-05 showed the following points: item #23-7 points, item #24-0 points, item #25 a-1 point, b-1 point, c-1 point, d-1 point, e-2 points, f-2 points, g-0 points, h-1 point, i-1 point, item #26-0 points, #27-0 points, t, item #33-0 points, item #34-0 points. Total of 17 points for Level of Care B.
- 12) The areas of dispute with the findings of the PAS-2005 for which additional points could be awarded included dysphagia, medication administration, and disorientation. The State Hearing Officer finds that a point cannot be awarded for dysphagia (item 23 f) as there is no diagnosis listed or medication being taken for dysphagia. The State Hearing Officer finds that a point cannot be awarded for orientation (item 25 g) as the claimant was oriented on the day of the assessment and reported only occasional confusion to Ms. █████ which could not be considered as disorientation. The State Hearing Officer finds that a point cannot be awarded for medication administration as the evidence and testimony showed that the claimant can take her medication although she needed reminders and that

she does not have to have the medication placed in her hand, mouth, tube or eye at all times by another person. Ms. [REDACTED] testified that she has handed the pills to the claimant but this does not occur all the time. Therefore, the State Hearing Officer finds that no additional points can be awarded and the finding of 17 points by Ms. [REDACTED] was correct based on the information given to her by the participants on 11-17-05.

13). 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."

14). 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 27th Day of February, 2006.**

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**Thomas M. Smith  
State Hearing Officer**