



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

March 1, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 28, 2007. 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
Libby Bogges, BOSS
[REDACTED] WVMI
[REDACTED], Claimant's son
[REDACTED] Panhandle Services

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

_____,

Claimant,

v. Action Number: 07-BOR-595

**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 28, 2007 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 28, 2007 on a timely appeal, filed January 2, 2007. It should be noted that the hearing was convened as a telephone conference hearing at claimant's request.

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's son and POA.
2. _____, Nurse Manager, Panhandle Services.
3. Libby Boggess, R.N., Bureau for Senior Services (BOSS).
4. _____ R.N., WV Medical Institute (WVMI).

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:

Chapter 500 of Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03, Sections 503.2, 503.2.1, 503.2.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- #1 Copy of regulations (3 pages).
- #2 Copy of PAS-2000 11-27-06 (8 pages).
- #3 Copy of notification letter 12-28-06.
- #4 Copy of reevaluation request.

(It should be noted that two (2) documents were provided which were not entered as evidence during the hearing and these documents were marked as not admitted for identification purposes only.)

Claimant's Exhibits:

None.

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of Title XIX Aged/Disabled Waiver Services Program when a reevaluation request was received and a new PAS-2000 was completed by _____ of WVMI on 11-27-06 which determined a Level of Care C.
- 2) The claimant was notified on 12-28-06 of the Level of Care determination (Exhibit #3) which resulted in a decrease in the number of homemaker hours from three (3) per day to four (4) per day and a hearing request was received by BOSS on 1-2-07, by the Board of Review on 1-19-07, and by the State Hearing Officer on 1-24-07.

- 3) The findings of the PAS-2000 dated 11-27-06 resulted in 24 total points which resulted in Level of Care C for four (4) hours per day or 124 hours per month.
- 4) The representative from BOSS provided testimony about the regulations from the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual (Exhibit #1) and entered evidence listed in Section VI.
- 5) The R.N. from WVMi presented her findings from the PAS-2000 completed on 11-27-06 which resulted in 24 total points for Level of Care C (Exhibit #2).
- 6) The claimant's representative purported that the claimant should be awarded points for Alzheimer's and arthritis as a previous PAS had shown that she has Alzheimer's and he discussed it with the R. N. from WVMi on the day of the assessment and that the claimant's doctor had recently sent a new assessment which included Alzheimer's.
- 7) The R. N. from BOSS purported that a process is in place for the Homemaker Agency to request an increase in the Level of Care if it is deemed appropriate.
- 8) The only areas of dispute with the findings of the PAS-2000 for which additional points could be awarded included Alzheimer's and arthritis. The State Hearing Officer finds that no additional points can be awarded for Alzheimer's or arthritis as there was no documentation from a medical professional for the arthritis and the Medical Necessity Evaluation Request did not have Alzheimer's checked.
- 9). Title XIX Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (Exhibit #1): There will be four levels of care for clients of ADW homemaker services. Points will be determined based on the following sections of the PAS:
 - #23- Medical Conditions/Symptoms- 1 point for each (can have total of 12 points) (must be based on medical evidence presented by appropriate medical professionals)
 - #24- Decubitis- 1 point
 - #25- 1 point for b., c., or d.
 - #26 Functional abilities
 - Level 1- 0 points
 - Level 2- 1 point for each item a. through i.
 - Level 3- 2 points for each item a. through m.; i. (walking) must be equal to or greater than Level 3 before points are given for j. (wheeling)
 - Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.
 - #27 Professional and Technical Care Needs- 1 point for continuous oxygen
 - #28 Medication Administration- 1 point for b. or c.
 - #34- Dementia- 1 point if Alzheimer's or other dementia
 - #34- Prognosis- 1 point if terminal

The 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) Regulations in Title XIX Aged/Disabled Waiver Policies and Procedures Manual Section 503.2.1 states that the Level of Care is determined by the number of points the individual receives on the PAS assessment tool.
- (2) The claimant received a total of 24 points from the PAS-2000 completed on 11-27-06.
- (3) The evidence and testimony presented during the hearing resulted in no additional points awarded to the claimant.
- (4) The claimant's total number of points remains at 24 which results in Level of Care C for four (4) hours per day or 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 1st Day of March, 2007.

Thomas M. Smith
State Hearing Officer