



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
State Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704
February 17, 2005

Joe Manchin III
Governor

Dear Ms. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 16, 2005. 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 Home and Community Based Waiver Services Program case.

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.

Eligibility and benefit levels for the Aged/Disabled Home and Community Based Services Waiver 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 PAS-2000 submitted to West Virginia Medical Institute (Aged/Disabled Home and Community-Based Waiver Services, Policy 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 (4) hours per day or 124 hours per month.

It is the decision of the State Hearing Officer to uphold the action of the Department (WVMI) to determine Level C for homemaker hours in the amount of (4) hours per day or 124 hours per month in the Title XIX Aged/Disabled Home and Community Based Waiver Services Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Kay Ikerd, BOSS
Michelle Willey, WVMI
[REDACTED] CCIL

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____

ADDRESS: _____

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 16, 2005 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 originally convened on February 16, 2005 on a timely appeal filed September 3, 2004.

It should be noted here that any benefits under the Aged/Disabled Home and Community Based Services Waiver Program have been continued pending the results of this hearing. It should also be noted that Kay Ikerd from the Bureau for Senior Services (BOSS) participated in the hearing by speaker phone upon agreement of the claimant.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Aged/Disabled Home and Community Based Services Waiver is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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. _____ Kanawha Home Health R.N.
3. _____ Kanawha Home Health CAN
4. _____ Casemanager, CCIL
5. Michelle Willey, WVMI R.N.
6. Kay Ikerd, Bureau for Senior Services

Presiding at the hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED

The question to be decided is whether WVMI took the correct action to determine the claimant's level of care to be level C and number of homemaker hours to be four (4) hours per day or 124 hours per month.

Page 2

V. APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-1-03.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- Exhibit #1 Copy of regulations (5 pages).
" #2 Copy of PAS-2000 reviewed 8-20-04 (6 pages).
" #3 Copy of notification letter 8-24-04.
" #4 Copy of hearing request received 9-3-04.

Exhibit #C1-1 Copy of statement from doctor (name unintelligible) dated 2-14-05.

VII. FINDINGS OF FACT

1. The claimant was an active recipient of the Title XIX Aged/Disabled Wavier Services Program (ADW) when a reevaluation of medical eligibility was completed by West Virginia Medical Institute (WVMI) on 8-20-04 (Exhibit #2).

2. A PAS-2000 completed by Michelle Willey, R. N. from WVMI, on 8-20-04 determined the claimant to be eligible for Level of Care C which translated to four (4) hours per day or 124 hours per month (Exhibit #2).

3. The findings of the PAS-2000 dated 8-20-04 (Exhibit #2) were as follows: item #23 included Angina Rest, Angina Exertion, Dyspnea, Significant Arthritis, Pain, Diabetes, Mental Disorder, and Other (HTN) for a total of eight (8) points, that item #24 showed no decubitus present for zero (0) points, that item #25 showed that the claimant was physically unable to vacate the building for (1) point, that item #26 showed self/prompting with eating (a) for zero (0) points, physical assistance needed with bathing (b), dressing (c) and grooming (d) for one (1) point each, that there was occasional incontinence of bladder (e) for one (1) point and incontinence of bowel (f) for two (2) points, that there was intermittent disorientation (g) for one (1) point, that one-person assistance was needed for transferring (h) for two (2) points, that assistive device/supervision was needed with walking (i) for one (1) point, that no wheelchair was needed (j) for zero (0) points, that vision was impaired but correctable for zero (0) points, that hearing (l) and communication (m) were not impaired for zero (0) points, that the only professional/technical needs (#27) was accu checks for zero (0) points, that she is capable of administering medications with supervision for one (1) point, that there was no alzheimer's/dementia or related condition for zero (0) points (item #34), that prognosis was deteriorating for zero (0) points, and that the total number of points was 20 which qualified for Level C care or four (4) hours a day and 124 hours per month.

4. Ms. _____ testified that she goes out of it sometimes and becomes disoriented, that she needs her hours back, and that the landlord comes if the emergency cord is pulled.

5. Ms. [REDACTED] testified that due to ammonia level, the claimant gets disoriented, that she has found her several times when she did not know what she was doing and was disoriented and could not answer her, that she was admitted to the hospital on 1-21-01, 2-5-05, and 2-12-05, that she sometimes hears the phone ringing but does not know to answer it, that she did not have a wheelchair at the time the PAS-2000 was completed but is getting one now, that she would use it in the home, that she fixes food for her to warm up when she is not there, and that she can sometimes get to the kitchen and sometimes cannot.

Page 3

6. Ms. [REDACTED] testified that the claimant lives in a controlled setting and that there are pull cords in the bathroom and bedroom if an emergency occurs.

7. PAS-2000 approved 8-20-04 (Exhibit #2) showed the following points: Item #23- 8 points, item #24-0 points, item #25-1 point, item #26 a-0 points, b-1 point, c-1 point, d-1 point, e-1 points, f-2 points, g-1 point, h-2 points, i-1 point, j-0 points, k-0 points, l-0 points, m-0 points, #27-0 points, #28-1 point, #34-0 points, #35-0 points. Total points-20 for Level C.

Item 23 8 points
" 24 0 point
" 25 1 "
" 26 10 "
" 28 1 "

CONCLUSIONS OF LAW

1. Policies and Procedures Manual, 11-1-03 states, in part, that applicants "must be approved as medically eligible for NF level of care".

2. Policies and Procedures Manual Section 570.1c states, in part

"LEVEL 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)
 #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)
 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."

3. Policies and Procedures Manual Section 570.1d 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. DECISION

Based upon the evidence and testimony presented, I must uphold the action of the Department (WVMI) to determine Level of Care C which results in four (4) hours per day or 124 hours per month of homemaker hours in the Aged/Disabled Home and Community Based Waiver Services case. WVMI reviewed a PAS-2000 on 8-20-04 and arrived at 20 total points which resulted in a Level of Care C determination which translates into four (4) hours per day or 124 hours per month. During the
 Page 4

hearing, testimony on behalf of the claimant revealed that the claimant sometimes becomes disoriented and does not know what she is doing and that she will be obtaining a wheelchair to use. However, the PAS-2000 reflected that the claimant has intermittent disorientation, which appears to be the correct finding for that category, and the claimant did not use a wheelchair when the PAS-2000 was completed on August 20, 2004. There appeared to be no other differences with the findings of the PAS-2000 completed on 8-20-04 offered by the claimant or her witnesses and the State Hearing Officer was convinced by Ms. Willey's testimony that her decision that the claimant qualified for Level of Care C was accurate. Therefore, the State Hearing Officer must uphold the action of the Department (WVMI) to determine Level of Care C which results in four (4) hours per day or 124 hours per month.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.