

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
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 April 5, 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 convened on April 5, 2005 on a timely appeal, filed October 8, 2004.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

_____. Claimant's Mother and Representative
_____. Case Manager, All Care Home & Community Services, Inc.
Chris Miller, RN, WVMH (By Telephone)
Kay Ikerd, RN, BoSS (By Telephone)

Observing:

Teena Testa, RN, WVMH (By Telephone)

IV. QUESTION(S) TO BE DECIDED:

The question to be decided is whether correct policy and procedures were used in the decision to decrease the number of homemaker service hours the claimant is eligible to receive under the ADW Program.

V. APPLICABLE POLICY:

Section 570.1.a of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
- B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate level of care (LOC) that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the state.

Section 580.2 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

A medical eligibility reevaluation may include either a periodic or annual reevaluation. The purpose of either of these reevaluations is to confirm and validate an individual's continued medical eligibility for ADW services and to establish whether there is any change in the LOC the individual requires.

Section 580.2.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

All clients must be evaluated at least annually in order to confirm their medical eligibility for continued services and to establish the LOC they require.

Section 570.1.c of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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:

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- #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

Section 570.1.d of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

LEVELS OF CARE SERVICE LIMITS

Total number of points possible is 44.

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

The total number of hours may be used flexibly within the month, but must be justified and documented on the POC.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits

:

- Exhibit D-1) Sections 570.1.c, 570.1.d, 580.2, and 580.2.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003
- Exhibit D-2) PAS-2000 dated 09/13/04
- Exhibit D-3) Notification Letter dated 09/16/04
- Exhibit D-4) Hearing Request dated 10/08/04

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VII. FINDINGS OF FACT:

- 1) _____ was notified in a letter dated 09/16/04 that **“You have been determined eligible to receive in-home services** under the Aged and Disabled Waiver Program. The number of homemaker hours approved is based on your medical needs and cannot exceed 93 hours per month.” (Exhibit D-3)
- 2) The claimant had previously been eligible for 124 hours of service per month.
- 3) The claimant requested a hearing on 10/08/04. (Exhibit D-4)
- 4) The PAS-2000 reevaluation was completed on 09/13/04. Present during the evaluation was _____, _____ mother.
The claimant was 35 years of age at the time of the evaluation. The health assessment reads in part: Down’s Syndrome, Depression, Dementia/Alzheimer’s, poor stamina, mother reports he doesn’t go out of the house or out of his room very much at all. He is very reclusive according to his mother. Easily chokes and mother reports his foods have to be cut up very small for him. (Exhibit D-2)
- 5) The information contained in the claimant=s PAS-2000 indicates the following:

Item 23 - 4 items marked	=	4	points
Item 24 - no decubitus	=	0	points
Item 25 - Mentally unable to vacate	=	1	point
Item 27 - No professional needs	=	0	points
Item 28 - Unable to self-medicate	=	1	point
Item 34 – Alzheimer’s/Dementia	=	1	point
Item 35 - Prognosis-stable	=	0	points
Item 26:			

Level I for items h, i, j & l (transferring - independent, walking - independent, no wheelchair & hearing - not impaired)	=	0	points
Level II for items a, b, c, d, f, g, k & m (Needs physical assistance with eating, bathing, dressing, grooming; occasional bowel incontinence, intermittent disoriented, vision - impaired/correctable, and communication – impaired/understandable)	=	6	points
Level III for item e (incontinent bladder)	=	2	points
Total	=	15	points (Level of Care B or 93 Hours per month)

- 6) Ms. _____ testified that the claimant eats in his room. He doesn't chew his food – he mashes it against the roof of his mouth. His food must be cut into small enough particles in order for him to swallow without chewing the food. Under bathing, the claimant cannot wash his hair and will not wash himself when he is in the bathtub. He will sit in the bathtub and never wash. The healthcare worker must bathe him. He stains his underwear where he does not clean himself after a bowel movement. He has lots of accidents – it is more than once or twice a week. Five of seven days they have trouble with him messing himself. .
- 7) Ms. [REDACTED] stated that at the time of the evaluation, it is noted that “client is able to control his bowels on an occasion mother does report that client will soil his clothes with stool, sometimes after he eats a big meal he will have uncontrollable BM's & she has had to throw away his underwear in the past. Mother reports he does not clean himself very good after a BM.” .
- 8) Ms. [REDACTED] noted that the claimant was given a Level 2 for grooming which is physical assistance; yet in the narrative it reads mother has to groom his fingernails and toenails, he has to be shaved. Ms. _____ has stated he has to have his hair washed.
- 9) Ms. _____ stated the claimant is not able to comb his hair but is able to brush his teeth after the tooth paste is put on the toothbrush.
- 10) The narrative on the PAS-2000 reads that client gets angry when having to take a bath. The worker assists him in taking a bath at least 3x week.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that there are four levels of care and points will be determined based on information derived from the PAS-2000.
- 2) The PAS-2000 evaluation completed 09/13/04 showed a total of 15 points. This equates to Level of Care B with 93 hours of service per month.
- 3) The claimant had previously been evaluated for Level of Care C which requires a point total of 18 – 25.
- 4) Although there were some differences in the testimony about the claimant's ability to take a bath and bowel incontinence, there was no convincing evidence or testimony shown that would change the finding on the PAS-2000 completed 09/13/04.

IX. DECISION:

Based on evidence and testimony provided during the hearing, the State Hearing Officer finds that the Agency has correctly determined the claimant's level of care according to the information found of the PAS-2000 form. The Agency is upheld in its proposal to limit the number of homemaker hours to a maximum of 93 hours per month. The action as described in the notification letter dated September 16, 2004 will be taken.

X. RIGHT OF APPEAL:

See Attachments

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29