



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
January 24, 2005

Joe Manchin III
Governor

Dear Ms. _____

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 24, 2004 and January 20, 2005. 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 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 B which amounts to (3) hours per day or 93 hours per month.

It is the decision of the State Hearing Officer to uphold the action of the Department (WVMI) to determine Level B for homemaker hours in the amount of (3) hours per day or 93 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
Kathy Gue, WVMI

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 January 20, 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 September 24, 2004 and was reconvened on January 20, 2005 on a timely appeal filed March 26, 2004. It should be noted that the hearing was reconvened after the claimant's representative objected to the PAS-2000 completed on March 9, 2004 as hearsay because the nurse who completed it did not attend the hearing and a new PAS-2000 was ordered by the State Hearing Officer and that PAS-2000 determined the same number of homemaker hours.

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 Brian Holstine from BOSS and Stacy Leadman from WVMI participated in the hearing on September 24, 2004 by speaker phone upon agreement of the claimant and that Kay Ikerd from BOSS and Kathy Gue from WVMI participated when the hearing was reconvened on January 20, 2005 by speaker phone upon agreement of the claimant. It should be noted that the hearing was originally scheduled for 5-27-04, 7-2-04, 7-26-04, 9-24-04, and 12-22-04 but was rescheduled first at Department's request, then at claimant's request, then after an abandonment letter was issued on 7-26-04, then after a new PAS-2000 was completed, and finally at claimant's request.

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's son and representative.
2. Brian Holstine, Bureau for Senior Services (on September 24, 2004).
3. Stacy Leadman, WVMI R.N. (on September 24, 2004).
4. Kay Ikerd, Bureau for Senior Services (on January 20, 2005).
5. Kathy Gue, WVMI R.N. (on January 20, 2005).

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 B and number of homemaker hours to be three (3) hours per day or 93 hours per month.

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 hearing request.
- " #3 Copy of PAS-2000 reviewed 3-9-04 (7 pages) (objected to by claimant and not admitted).
- " #4 Copy of Medical Necessity Reevaluation Request (3 pages).
- " #5 Copy of RN assessment 2-24-04 (5 pages).
- " #6 Copy of notification letter 3-10-04.
- " #7 Copy of PAS-2000 reviewed 11-22-04 (5 pages).

Exhibit #C1-1 Copy of letter from [REDACTED] of SCAC 6-10-04 (2 pages).

VII. FINDINGS OF FACT

1. The claimant was an active recipient of the Title XIX Aged/Disabled Wavier Services Program (ADW) when a request for reevaluation of medical eligibility was submitted by SCAC 2-25-04 (Exhibit #4).

2. A PAS-2000 completed by Melanie Kearns, R. N. from WVMi, on 3-9-04 determined the claimant to be eligible for Level of Care B which translated to three (3) hours per day or 93 hours per month (Exhibit #3) but that PAS-2000 was objected to during the hearing convened on 9-24-04 by Mr. _____ as hearsay as Ms. [REDACTED] was not available for cross-examination and a new PAS-2000 was ordered by the State Hearing Officer.

3. The findings of the PAS-2000 dated 11-22-04 (Exhibit #7) were as follows: item #23 included Dyspnea, Significant Arthritis, Pain, Mental Disorder and other (HTN) for a total of five (5) 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 physical assistance needed with eating (a) for one (1) point, physical assistance needed with bathing (b), dressing (c) and grooming (d) for one (1) point each, that there was intermittent incontinence of bladder (e) and bowel (f) for one (1) point each, that there was intermittent disorientation (g) for one (1) point, that she was independent with transferring (h) for zero (0) points, that supervision/assistive device was needed with walking (i) for one (1) point, that no assistance was needed with wheeling (j) for zero (0) points, that vision (k) was impaired but correctable and hearing was not impaired for zero (0) points, that communication (m) was not impaired for (0) points, that there were no professional/technical needs (#27) for zero (0) points, that she is capable of administering medications with prompting/supervision for one (1) point, that there was alzheimer's/dementia

or related condition for one (1) point (item #34), that prognosis was deteriorating but not terminal for zero (0) points, and that the total number of

points was 16 which qualified for Level B care or three (3) hours a day and 93 hours per month.

4. Mr. _____ testified that the claimant cannot do anything on her own with bathing, that she just tries to help, that she has lost over 50% of the use of her right shoulder and she is right-handed, that the PAS's completed recently seem to show her condition as better even though the prognosis is deteriorating, that she needs help getting out of bed in the morning, that she does use a cane but sometimes has to have someone walk with her and assist, that when she is alone, she can ambulate when she has to, that she cannot communicate when she is in pain, that she cannot remember to take medication or whether she has eaten, that she needs Physical Therapy but the doctor thinks it will damage her, that she uses a puffer four (4) times a day, that she has rashes and needs skin care, that someone has to make sure she takes her medications.

5. Ms. Gue testified that the claimant needs help with cutting food and preparing it but can feed herself, that she needed help with buttons and zippers but can wash her face, hands, etc., that her shoulder has healed and may be a little better now, that she did document the morning stiffness, that the claimant uses a cane to ambulate, that she did not have any problem understanding her on the day of the assessment, that she was not taking Physical Therapy and did not indicate skin care needs on the day of the assessment, that medications are set up for her but she can put them in her mouth, and that no points were awarded for items #30-#33.

6. Ms. Ikerd testified that a point is awarded in item #35 only if the person is terminal and that the PAS is completed based on current functionality.

7. PAS-2000 approved 11-22-04 (Exhibit #7) showed the following points: Item #23-5 points, item #24-0 points, item #25-1 point, item #26 a-1 point, b-1 point, c-1 point, d-1 point, e-1 point, f-1 point, g-1 point, h-0 points, i-1 point, j-0 points, k-0 points, l-0 points, m-0 points, #27-0 points, #28-1 point, #34-1 point, #35-0 points. Total points-16 for Level B.

Item 23 5 points
" 24 0 point
" 25 1 "
" 26 8 "
" 28 1 ".
" 34 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 B which results in three (3) hours per day or 93 hours per month of homemaker hours in the Aged/Disabled Home and Community Based Waiver Services case. WVMI reviewed a PAS-2000 on 11-22-04 and arrived at 16 total points which resulted in a Level of Care B determination which translates into three (3) hours per day or 93 hours per month. During the hearing, testimony on behalf of the claimant revealed some differences in interpretation on behalf of the claimant in regard to the categories of bathing, transferring, walking, administering medications, and communication but the State Hearing Officer was convinced by Ms. Gue's testimony that her findings were accurate. Ms. Gue testified that the claimant is able to assist with bathing by washing her face and hands so physical assistance would be the correct finding in that area. Ms. Gue testified that the claimant is able to ambulate with a cane and could transfer independently and, while Mr. _____ testified that the claimant sometimes needs assistance in walking and getting out of bed in the mornings, the finding of supervision/assistive device with walking and independence with transferring appeared to be an accurate finding. The evidence and testimony showed that the claimant can place medication in her mouth and can communicate and those findings were also correct. Therefore, the State Hearing Officer must uphold the action of the Department (WVMI) to determine that 16 points existed from the PAS-2000 completed on 11-22-04 resulting in Level of Care B and three (3) hours per day or 93 hours per month.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.