



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
June 24 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mr. _____,

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 21, 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 three (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 three (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
Libby Boggess, BOSS
MountainHeart Comm. Services
Michelle Wiley, WVMI

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

_____,

Claimant

Action Number: 05-BOR-4709

v.

West Virginia Department of
Health & Human Resources,

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 21, 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 June 21, 2005 on a timely appeal filed February 2, 2005.

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 the hearing was originally scheduled for April 28, 2005 but was rescheduled at claimant's request after an abandonment letter was issued on that date. It should also be noted that all parties participated in the hearing by speaker phone at the request 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. Kay Ikerd, Bureau for Senior Services (BOSS).
3. Michelle Wiley, West Virginia Medical Institute (WVMI) R.N.

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.

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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 (7 pages).
" #2 Copy of hearing request received 2-2-05.
" #3 Copy of PAS-2000 reviewed 12-28-04 (5 pages).
" #4 Copy of notice of decision 1-25-05.

VII. FINDINGS OF FACT

1. The claimant was an active recipient of the Title XIX Aged/Disabled Waiver Services Program (ADW) when a reevaluation of medical eligibility was completed by West Virginia Medical Institute (WVMI) on 12-28-04 (Exhibit #3).

2. A PAS-2000 completed by Michelle Wiley, R. N. from WVMI, on 12-28-04 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).

3. The findings of the PAS-2000 dated 12-28-04 (Exhibit #3) were as follows: item #23 included Dyspnea, Dysphagia, Pain, and Other (CHF) for a total of four (4) points, (it should be noted that Ms. Wiley testified that Contractures also should have been credited for a point which would make a total of five (5) points for item #23, 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 in an emergency for one (1) point, that item #26 showed physical assistance needed with eating (a) for one (1) point, total care needed with bathing (b) and dressing (c) for two (2) points each, physical assistance needed with grooming (d) for one (1) point, that there was no incontinence of bladder (e) or bowel (f) for zero (0) points, that there was no disorientation (g) for zero (0) points, that two-person assistance was needed with transferring (h) for two (2) points, that two-person assistance was needed with walking (i) for two (2) points, that no assistance was needed with wheelchair for zero (0) points, that vision was impaired but correctable for zero (0) points, that hearing was not impaired for zero (0) points, that communication (m) was not impaired for zero (0) points, that inhalation therapy and chest PT-vest were professional/technical needs (#27) for zero (0) points, that he is capable of administering medications with supervision/prompting for one (1) point, that there was no alzheimer's/dementia or related condition for zero (0) points (item #34), that prognosis was stable for zero (0) points (#35), and that the total number of points was 17 which qualified for Level B care or three (3) hours a day and 93 hours per month.

5. Ms. Wiley testified that she reviewed the findings of the PAS-2000 on 12-28-04 with the claimant and that he was in agreement with the findings.

6. Mr. _____ testified that he has inhalation therapy and the PT vest and asked why he did not get a point for those, that his condition is getting worse and he needs more help, that he has no disagreement with the findings of Ms. Wiley, and that he does the breathing treatments for one (1) hour daily.

7. Ms. Wiley testified that she did not mark Mr. _____ as total care with grooming as he was able to brush his teeth and only needed assistance with the cups and that since he was able to brush his teeth, he could not be assigned as total care in grooming. Ms. Wiley also testified that the only professional/technical care need for which a point could be awarded is continuous oxygen.

8. PAS-2000 approved 12-28-04 (Exhibit #3) showed the following points: Item #23-5 points, item #24-0 points, item #25-1 point, item #26 a-1 point, b-2 points, c-2 points, d-1 point, e-0 points, f-0 points, g-0 point, h-2 points, i-2 points, j-0 points, k-0 points, l-0 points, m-0 points, item #27-0 points, item #28-1 point, item #34-0 points, item #34-0 points, item #35-0 points. Total points-17 points for Level B

Item 23 5 points

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Item 24 0 point

" 25 1 "
" 26 10 "
" 28 1 "

9. The only area of dispute involved professional and technical care needs and the only item in that category for which a point can be awarded is continuous oxygen and the claimant does not use continuous oxygen. Thus, there were no areas of dispute for which additional points could be awarded to the claimant.

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"

4. The claimant has been properly and correctly determined to have 17 total points and to be eligible for Level of Care B for three (3) hours per day or 93 hours per month.

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.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.