



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 28, 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 May 4, 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
Julia Foster, WVMI
[REDACTED] LCOC

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 May 4, 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 May 4, 2005 on a timely appeal filed February 14, 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 Kay Ikerd from the Bureau for Senior Services (BOSS) and Julia Foster from WV Medical Institute (WVMI) 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. _____, Claimant's step-daughter.
3. _____, Lincoln Co. Opportunity Council.
4. _____, _____ Co. Opportunity Council.
5. Julia Foster, RN, WVMI (participating by speaker phone).
6. Kay Ikerd, BOSS (participating by speaker phone).

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 proposed 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 received 2-14-05.

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- Exhibit #3 Copy of PAS0-2000 approved 9-15-04 (6 pages).
" #4 Copy of approval letter 1-25-05.
" #5 Copy of Medical Necessity Reevaluation Request.

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 LCOC on 9-8-04 (Exhibit #5).

2. A PAS-2000 completed by Julia Foster, R. N. from WVMI, on 9-15-04 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 9-15-04 were as follows: item #23 included Angina Rest, Angina Exertion, Dyspnea, Significant Arthritis, Pain, Diabetes, Contractures, Mental Disorder, and other (for nausea and vomiting) for a total of nine (9) 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 in an emergency for (1) point, that item #26 showed self-prompting needed 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 no incontinence of the bladder (e) for zero (0) points, that there was a colostomy for bowel for (f) for one (1) point, that there was no disorientation (g) for zero (0) points, that supervised/assistive device was needed for transferring (h) and walking (i) for one (1) point each, that there was no wheelchair (j) for zero (0) points, that vision (k) was impaired but correctable for zero points, that hearing (l) was impaired but correctable for zero (0) points, that communication (m) was not impaired for zero (0) points, that the only professional/technical needs (#27) were for inhalation therapy, ostomy, an skin care but no points were awarded, 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 deteriorating for zero (0) points, 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.

4. Mr. _____ testified that he now spends 95% of his time in bed, that he needs help with bathing, that he is not as alert as he was and has lost some of his memory.

5. Ms. _____ testified that Mr. _____'s has some disorientation and that his short-term memory is limited.

6. Ms. _____ testified that Mr. _____ needs one-person assistance with walking and transferring.

7. Ms. Foster testified that Mr. _____ seemed to be oriented on the day of the assessment, that he had no confusion with the questions, and that she documented on page 5 of the PAS-2000 that Mr. _____ told her he could get up most of the time on his own but sometimes needed help.

8. The areas of disagreement that the claimant and his witnesses had with the PAS-2000 involved orientation (item #26g), transferring (#26h) and walking (#26i). Ms. Foster testified that the claimant appeared oriented on the day of her assessment and the State Hearing Officer finds no evidence of disorientation. In regard to transferring and walking, the claimant reported to Ms. Foster on 9-15-04 that he could get out of bed and could use his walker to ambulate most of the time but needed assistance at times. Other than Ms. _____'s testimony, there was no other evidence that the claimant needed one-person assistance with walking and transferring and the claimant did not testify that he needed any assistance in those areas at the time the assessment was completed.

9. PAS-2000 approved 9-15-04 (Exhibit #3) showed the following points: Item #23-9 points, item #24-0 points, item #25-1 point, item #26 a-0 points, b-1 point, c-1 point, d-1 point, e-0 points, f-1 point, g-0 points, h-1 point, 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-17 for Level B.

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Item 23 9 points
" 24 0 point
" 25 1 "
" 26 7 "

The State Hearing Officer finds that the claimant was properly awarded 17 points for Level of Care B which translates into three (3) hours per day or 93 hours per month.

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 on 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.