



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 26, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 10, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce the homemakers hours due to a Level of Care determination.

In arriving at a decision, the State Hearings 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 for the Aged and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows: There are four levels of care for clients of ADW Homemaker services. Points will be determined based on specific sections of the PAS. (Aged/Disabled Home and Community Based Services Manual § 570.1.c & d. - Level of Care Criteria).

The information submitted at your hearing revealed: Your homemaker hours will not be reduced from a "C" to a "B" Level of Care.

It is the decision of the State Hearings Officer to REVERSE the PROPOSAL of the Department to determine your correct Level of Care.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] Case Manager – All Care Home/Community Services
Oretta Keeney, RN – West Virginia Medical Institute
Kay Ikerd, RN – Bureau of Senior Services

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,

Claimant,

v.

Action Number: _____

**West Virginia Department of
Health and 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 July 26, 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 June 10, 2005 on a timely appeal filed February 3, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was not held between the parties and, Ms. _____ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver Services is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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 an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

III. PARTICIPANTS:

[REDACTED], Claimant*
[REDACTED] RN – Wyoming County Council on Aging*
Kay Ikerd, RN – Bureau of Senior Services (BoSS)*
Michelle Wiley, RN – West Virginia Medical Institute (WVMI)*
*Participated by teleconference call

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Should Ms. _____'s Level of Care be reduced according to the Pre-Admission Screening (PAS) Form dated September 9, 2004?

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual § 580.2 *MEDICAL ELIGIBILITY REEVALUATION*; § 580.2.b *ANNUAL REEVALUATION*; § 570.1.c *LEVELS OF CARE CRITERIA* and; § 570.1.d *LEVELS OF CARE SERVICE LIMITS*

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual Policies
- D-2 PAS dated 09/09/04
- D-3 Notice of Decision dated 01/25/05
- D-4 Medical Reevaluation Request dated 08/27/04
- D-5 Scheduling Notice dated 03/22/05
- D-6 Memorandum with Hearing Exhibits dated 02/28/05
- D-7 Request for Hearing dated 01/27/05
- D-8 GroupWise Messages re: Scheduling
- D-9 Fax from [REDACTED] dated 05/16/05

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1) Aged/Disabled Home and Community Based Services Manual § 580.2 MEDICAL ELIGIBILITY REEVALUATION:

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. The client and CMA will be notified of the decision of both periodic and annual reevaluations. The client will receive information describing due process rights should he/she dispute the medical eligibility determination.

2) Aged/Disabled Home and Community Based Services Manual § 580.2.b ANNUAL REEVALUATIONS:

In the event the field nurse determines that a periodic reevaluation is not necessary, the client will be scheduled for an annual reevaluation. 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. The reevaluation process is initiated by the CM agency completing and submitting a Medical Necessity Reevaluation Request (Attachment 18). The request can be submitted two months prior to the annual date. However, to avoid disruption of waiver services, it must be received by the QIO at least 15 days prior to expiration of the current approved period to allow processing time.

3) Aged/Disabled Home and Community Based Services Manual § 570.1.c LEVELS 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 1 - 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 B or C |
| #34 | 1 point if Alzheimer's or other dementia |
| #35 | 1 point if terminal |

4) Aged/Disabled Home and Community Based Services Manual § 570.1.d Levels of Care Service Limits:

Level A	5-9 points	62 Hours Per Month
Level B	10-17 points	93 Hours Per Month
Level C	18-25 points	124 Hours Per Month
Level D	26-44 points	155 Hours Per Month

5) Ms. Ikerd reviewed the Level of Care policy and, there were no questions.

6) Ms. Wiley assessed the Pre-Admission Screening (PAS) Form dated September 9, 2004 in the following manner:

Question #23 - Medical Conditions/Symptoms: (c) Dyspnea; (d) Significant Arthritis; (f) Dysphagia; (h) Pain; (i) Diabetes; (k) Mental Disorder and; (l) Other (GERD). **Total Points = 7**

Question #24 – Decubitus – No. **Total Points = 0.**

Question #25 – Vacating the building – Physically Unable. **Total Points =1.**

Question #26 – Functional Levels:

Eating – 1	0 Point	
Bathing – 2	1 Point	
Dressing – 2	1 Point	
Grooming – 2	1 Point	
Bladder – 2	1 Points	
Bowel – 2	1 Points	
Orientation – 1	0 Point	
Transferring – 1	0 Point	
Walking – 4	2 Point	
Wheeling – 2	0 Points	
Vision – 2	0 Points	
Hearing – 1	0 Points	
Communication – 1	0 Points	Total Points = 7

Question #27 – Professional and Technical Care Needs: No. **Total Points = 0**

Question #28 – Capable of administering own medications: Yes **Total Points = 0**

Question #34 – Alzheimer’s or Dementia: No. **Total Points = 0**

Question #35 – Prognosis: Stable. **Total Points = 0**

The total number of points from Ms. _____’ Pre-Admission Screening (PAS) Form = 15 points = Level “B” Care (93 hours per month). Ms. _____ is currently receiving Level “C” Care (124 hours per month).

7) Ms. [REDACTED] has been Ms. [REDACTED]'s Homemaker Nurse for over one year. According to Ms. [REDACTED] Ms. [REDACTED] is extremely obese and unable to wash under the many folds on her body or, apply lotion to her body. Ms. [REDACTED] has been taking medication for angina as indicated on the PAS. Although Ms. [REDACTED] denied having Angina during the assessment, Ms. [REDACTED] disagreed with the lack of a deficit. Also, Ms. [REDACTED] is unable to apply a medication cream to her skin. This should be considered under "Ability to administer her own medications."

8) Ms. [REDACTED] Case Manger with All Care Home/Community Services, sent the State Hearing Officer a fax on May 16, 2005. She requested to have all parties participate by a teleconference call.

VIII. CONCLUSIONS OF LAW:

Ms. [REDACTED]'s Level of Care should not be reduced according to the testimony received at the hearing. Ms. [REDACTED] will receive one (1) additional point in the areas of Angina Rest, Bathing, Grooming and Administering Medication. The four (4) additional points will increase the points from 15 to 19 or, from "B" to a "C" Level of Care.

IX. DECISION:

It is the decision of this State Hearing Officer to REVERSE the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 26th Day of July, 2005.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**