



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 27, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 26, 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 Waiver Services Program.

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 and benefit levels for the Aged/Disabled Waiver Services 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 PS-2000 submitted to West Virginia Medical Institute (Section 570 of Title XIX Aged/Disabled Home and Community Based Services Waiver, Policies 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 Hearings Officer to uphold the action of the Department (WVMI) to determine Level of Care B in the amount of three (3) hours per day or 93 hours per month in the Title XIX Aged/Disabled Waiver Services Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BOSS
Stacy Leadman, WVMI
SCAC

**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 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 July 26, 2005 on a timely appeal, filed April 13, 2005. It should be noted that the hearing was conducted by telephone conference at claimant's request.

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

II. PROGRAM PURPOSE:

The Program entitled Title XIX Aged/Disabled Wavier 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 a skilled nursing facility (if not for the waiver services).

III. PARTICIPANTS:

1. _____, Claimant.
2. _____, Claimant's mother.
3. Kay Ikerd, Bureau for Senior Services (BOSS).
4. Stacy Leadman, WV Medical Institute (WVMI).

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether WVMI took the correct action to determine that the claimant was eligible for Level of Care B in the amount of three (3) hours per day or 93 hours per month.

V. APPLICABLE POLICY:

Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of regulations (5 pages).
- D-2 Copy of hearing request received 4-13-05.
- D-3 Copy of PAS-2000 completed 3-24-04 (5 pages).
- D-4 Copy of notification letter 3-29-05.

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of Title XIX Aged/Disabled Waiver Services when a reevaluation request was received and a new PAS-2000 was completed by Stacy Leadman of WVMI on 3-24-05 and determined a Level of Care B.
- 2) The claimant was previously approved for Level of Care C.
- 3) The claimant requested a hearing on 4-13-05 by telephone conference.
- 4) The findings of the PAS-2000 dated 3-24-05 were as follows: item #23 included a point for Dyspnea (c), Significant Arthritis (d), Paralysis (e), Pain (h), Diabetes (i), Mental Disorder (k), and other (unstable blood sugar) (l) for a total of seven (7) points; item #24 showed no Decubitus present for zero (0) points; item #25 showed that the claimant was unable to physically vacate the building in an emergency for one (1) point; item #26 showed no assistance needed with Eating (a) for zero (0) points, physical assistance needed with Bathing (b), Dressing (c), and Grooming (d) for three (3) points, Bladder Incontinence (e) for two (2) points, Occasional Bowel Incontinence (f) for one (1) point, no Disorientation (g) for zero (0) points, supervised/assistive device needed with Transferring (h) and Walking (i) for one (1) point each, that no Wheelchair (j) was needed in the home

for zero (0) points, that Vision (k) and Hearing (l) were impaired but correctable for zero (0) points, that communication was not impaired for zero (0) points; that item #27 (Professional and Technical Needs) did not include continuous oxygen for zero (0) points; that the claimant is capable of administering medications (item #28) for zero (0) points; that Alzheimer's/dementia was not present (item #34) for zero (0) points; that prognosis was stable (item #35) for zero points; and that the total number of points was 16 which qualified for Level of Care B or three (3) hours per day, 93 hours per month.

- 3) Ms. Leadman testified that she reviewed the PAS-2000 with those present and that all agreed with the findings.
- 4) Ms. _____ testified that at times she can ambulate holding onto walls but many days, she cannot get out of bed as her leg seems dead, that she has severe muscle spasms, that she does not remember demonstrating walking for Ms. Leadman, that she does not have enough room for a wheelchair, that the information she gave Ms. Leadman on the day of the assessment was true, but that she does not recall Ms. Leadman reviewing the information with her.
- 5) Ms. _____ testified that she has to care for her daughter when the homemaker is not there, that her daughter has had psychotic episodes, that she has a handicap bar for bathing, that she has to dry her daughter's hair and back, that her diabetes is getting worse, that she has to do all the cooking, that her daughter has neuropathy, and that she does not remember what information was given to Ms. Leadman.
- 6) The PAS-2000 completed on 3-24-05 showed the following points: item #23-7 points, item #24-0 points, item #25-1 point, item #26 a-0 points, b-1 point, c-1 point, d-1 point, e-2 points, f-1 point, g-0 points, h-1 point, i-1 point, item #27-0 points, item #28-0 point, item #34-0 points. Total of 16 points for Level of Care B.
- 7) The only areas of dispute with the PAS-2000 completed on 3-24-05 was in the area of walking (ambulation). The claimant testified that she does not get out of bed many days. Ms. Leadman testified and documented that the claimant ambulates using a cane and holding onto walls and that she denied needing assistance with walking or transferring except for occasionally.
- 8). 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."

9). 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. CONCLUSIONS OF LAW:

- 1) Title XIX Aged/Disabled Waiver Policies and Procedures Manual 570.1.c provides the criteria for determining the points awarded for each functional activity of daily living and Section 570.1.d provides the service limits. The only area of dispute the claimant addressed with the PAS-2000 completed by Ms. Leadman on 3-24-05 was in the area of walking. However, Ms. Leadman clearly documented that the claimant stated that she only occasionally needed assistance with walking and that the claimant could ambulate with a cane and holding onto walls. Ms. Leadman also testified and documented that she reviewed the findings of the PAS-2000 on 3-24-05 with the claimant, her mother, and the homemaker and they were all in agreement with her findings. The State Hearing Officer finds that the claimant qualifies for 16 points which translates into Level of Care B and three (3) hours per day or 93 hours per month.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department (WVMI) to determine Level of Care B for three (3) hours per day or 93 hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of July, 2005.

**Thomas M. Smith
State Hearing Officer**