



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

May 26, 2006

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 19, 2006. 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-2005 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
[REDACTED], WVMI
[REDACTED], SCAC
[REDACTED], All Aide

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

____,

Claimant,

v.

Action Number: 06-BOR-1098

**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 May 19, 2006 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 May 19, 2006 on a timely appeal, filed January 3, 2006. It should be noted that the hearing was originally scheduled for May 18, 2006 by telephone conference but was rescheduled at claimant's request in the [REDACTED] County DHHR office.

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. [REDACTED], Claimant.
2. [REDACTED], Claimant's homemaker.
3. [REDACTED], Homemaker R. N., All Aide.
4. [REDACTED], Casemanager, SCAC
5. [REDACTED], Claimant's homemaker.
6. Kay Ikerd, Bureau for Senior Services (BOSS) (testifying by speaker phone)
7. [REDACTED], WV Medical Institute (WVMI) R. N. (testifying by speaker phone).

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 (13 pages).
- D-2 Copy of hearing request received 1-3-06.
- D-3 Copy of PAS-2005 completed 12-7-05 (7 pages).
- D-4 Copy of notification letter 12-15-05.
- D-5 Copy of reevaluation request.

Claimant's Exhibits:

None.

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-2005 was completed by [REDACTED] of WVMI on 12-7-05 which determined a Level of Care B.
- 2) The claimant's hearing request was received by the Bureau for Medical Services on 1-3-06, by the Bureau for Senior Services on 2-14-06, by the Board of Review on 4-5-06, and by the State Hearing Officer on 4-7-06 and a hearing was convened on 5-19-06.

- 3) The findings of the PAS-2005 dated 12-7-05 resulted in 15 total points which resulted in Level of Care B for three (3) hours per day or 93 hours per month.
- 4) Ms. Ikerd testified about the regulations from the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual.
- 5) Ms. [REDACTED] presented her findings from the PAS-2005 completed on 12-7-05 (Exhibit #D-3).
- 6) Ms. [REDACTED] testified that the claimant should have been awarded a point for dysphagia (item #23 f) as it is a symptom of Advanced Huntington's Chorea, that the claimant could not vacate the premises, and that disorientation and dementia are related to the disease.
- 7) Ms. [REDACTED] testified that she has to feed the claimant all the time she is there.
- 8) Ms. [REDACTED] testified that she has been with the claimant for three (3) years and her condition has deteriorated and gotten much worse, that her medication has to be set up for her, that she chokes when eating but is not total feed all the time.
- 9) Ms. [REDACTED] testified that the claimant has a wheelchair that she now uses in the home and that she cannot pick up anything.
- 10) Ms. [REDACTED] testified that the claimant can take her pills out of the pillbox so no point can be awarded for medication administration, that there was no testing, treatment or diagnosis for dysphagia so a point could not be awarded, and that she reviewed her findings with the client and homemaker.
- 11) The PAS-2005 completed on 12-7-05 showed the following points: item #23-4 points, item #24-0 points, item #25 a-1 point, b-1 point, c-1 point, d-1 point, e-2 points, f-0 points, g-1 point, h-1 point, i-1 point, j-0 points, item #26-0 points, #27-0 points, item #33-1 point, item #34-1 point, vacating the building 0-points. Total of 15 points for Level of Care B.
- 12) The areas of dispute with the findings of the PAS-2005 for which additional points could be awarded included dysphagia, eating, wheeling, medication administration, and vacating the building. The State Hearing Officer finds that a point should be awarded for dysphagia (item 23f) as choking is a symptom of Huntington's Chorea. The State Hearing Officer researched Medline Plus and Mayo Clinic and choking or inability to swallow was listed as a symptom of the disease. Therefore, a point is awarded for dysphagia (item #23f). The State Hearing Officer finds that an additional point cannot be awarded in the areas of eating, wheeling, medication administration and vacating the building. The evidence and testimony showed that, while Ms. [REDACTED] testified that she feeds the claimant all time when she is there, the claimant is not total feed at all times. Thus, an additional point cannot be awarded in that area. In the area of wheeling, the claimant did not use a wheelchair in the home at the time of the assessment and a point cannot be awarded for wheeling. In the area of medication administration, medication does not have to be placed in the claimant's hand, mouth, tube or eye at all times and an additional point cannot be awarded in that area. In the area of vacating the building, the claimant received a Level II finding for walking and orientation and a point cannot be awarded for vacating the building unless the recipient has a Level III finding in the areas of walking and

orientation. Thus, an additional point cannot be awarded in the area of vacating the building. The State Hearing Officer finds that the claimant has a total of 16 points which translates to Level of Care B for three (3) hours per day or 93 hours per month.

13. Policies and Procedures Manual Section 570.1,c states, in part

"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) Medical Condition

#24 - 1 point Decubitus

#25 - Level I - 0 points Functional levels

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

#26 - 1 point for continuous oxygen

#27 - 1 point for "No" answer-medical administration

#33 - 1 point if Alzheimer's or other dementia

#34 - 1 point if terminal."

Total number of points possible is 44."

14) Policies and Procedures Manual Section 570.1.d 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:

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 claimant qualified for 16 points which translates into Level of Care B and three (3) hours per day and 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 26th Day of May, 2006.

Thomas M. Smith
State Hearing Officer