



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
150 Maplewood Ave.  
Lewisburg, WV 24901**

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

August 3, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 1, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease homemaker hours under the Aged Disabled Waiver, A/DW, Program.

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 for the A/DW Program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged/Disabled (HCB) Services Manual 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that after review of the current PAS-2005, you meet the criteria for level of care C which equates to 124 service hours per month.

It is the decision of the State Hearing Officer to uphold the proposed action of the Department to decrease homemaker hours to a level C under the A/DW Program.

Sincerely,

Margaret M. Mann  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
[REDACTED] CM, CWVAS  
Libby Boggess, BoSS  
[REDACTED], WVMI

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 05-BOR-6846**

**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 August 1, 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 August 1, 2006 on a timely appeal, filed October 26, 2005. It should be noted that this hearing was originally scheduled for January 25, 2006. The hearing was rescheduled for February 24, 2006 because of inclement weather. It was rescheduled a second time for April 11, 2006 at the request of WVMI. The hearing was rescheduled a third time for May 16, 2006 at the request of WVMI.

The State Hearing Officer was notified on April 28, 2006 that the nurse who completed the PAS-2000, \_\_\_\_\_, had resigned. Another PAS-2005 was ordered on May 1, 2006. The new PAS-2005 was completed on June 7, 2006. There was no change in the original findings and the hearing was rescheduled for August 1, 2006.

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

**II. PROGRAM PURPOSE:**

The Program entitled Aged Disabled Waiver 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:**

\_\_\_\_\_, Claimant

\_\_\_\_\_, Claimant's Daughter

\_\_\_\_\_ Case Manager, Central West Virginia Aging Services, Inc.

Libby Boggess, RN, BoSS (By Telephone)

\_\_\_\_\_ RN, WVMi (By Telephone)

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

### **IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Department was correct in their decision to reduce homemaker hours under the Aged/Disabled Waiver (HCB) program.

### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Service Manual §570 and §580

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

D-1 Aged/Disabled Home and Community based Services Manual §570.1 c,d. and §580.2

D-2 Pre-Admission Screening, PAS, completed June 7, 2006

D-3 Notice of Decision dated October 18, 2005

#### **Claimant's Exhibits:**

C-1 Statement from \_\_\_\_\_ dated 06/22/2006

C-2 Statement from \_\_\_\_\_

C-3 RN Assessment Form dated 06/19/2006

## **VII. FINDINGS OF FACT:**

- 1) [REDACTED] is a 72-year-old female. She is an active participant in the A/DW program and her eligibility was undergoing an annual evaluation on September 26, 2005. This evaluation found that the claimant remained eligible for the Aged/Disabled Waiver program; however, it was determined that the level of care that she required had decreased from level D to a level C. The claimant requested a hearing on this issue October 26, 2005.
- 2) Before the hearing could be convened, the WVMi nurse who completed the PAS-2000 resigned. The State Hearing Officer issued an order for a new PAS on May 1, 2006. This PAS-2005 was completed on June 7, 2006 with no change in the original findings. The hearing was scheduled for August 1, 2006.
- 3) A WV Medical Institute nurse, [REDACTED] completed a Pre-Admission Screening (PAS) in Ms. \_\_\_\_\_ home with the claimant, her daughter, a neighbor and her case manager at the time present. This PAS evaluation determined that the claimant remained eligible for the Aged/Disabled Waiver program; however, it was determined that the level of care that she required had decreased from level D to a level C with 19 points awarded.
- 4) This claimant's primary diagnoses listed were organic brain disease, diabetes mellitus, atrial fibrillation and anticoagulation.
- 5) The June 7, 2006 PAS assigned this claimant with 19 points in determining the level of care required. The evaluating nurse assigned five (5) points in the areas of Medical Conditions/Symptoms (angina rest, angina exertion, diabetes, mental disorder and hypertension) and twelve (12) points in the area of functional levels. The claimant was assessed as not being able to administer her own medication and was assigned one (1) point. There was also a point given under question # 33 as the claimant has a diagnosis of organic brain disease. The total points assigned were nineteen (19) which is level C. This equates to 124 homemaker hours per month.
- 6) The issues addressed by the claimant were in the areas of dyspnea under #23 (c) medical conditions/symptoms, decubitus, eating, bowel incontinence, transferring, walking, orientation, vacating, and communication.
- 7) The Department conceded the diagnosis of dyspnea. This would bring the point total to twenty (20).
- 8) Decubitus is a bedsore caused by a pressure point. No bedsores were noted during the assessment. Ms. \_\_\_\_\_ stated during the day of the assessment her mother had a diabetic ulcer on the bottom of her foot the day of the assessment.
- 9) Testimony from [REDACTED] revealed that there are times the claimant's daughter has to help the claimant in and out of bed. The agency's records show the claimant is incontinent with her bowels. This is documented in their records on 06/19/06. They have had to remove knives and other sharp objects from the home for safety reasons.

- 10) Testimony from [REDACTED] revealed that there is documentation in the assessment to support the finding that the claimant is totally disoriented. It is noted in the assessment that the “client is aware of who she is. She was not able to tell me the neighbors name and she told her daughter she was \_\_\_\_ when in fact it was \_\_\_\_\_. Client was not aware her son lived down the street. \_\_\_\_ notes client does not get confused to who she is. Client was not aware of where she lived either.”
- 11) With the diagnosis of Alzheimer’s and being totally disoriented, [REDACTED] feels the claimant should be awarded a point for mentally not being able to vacate.
- 12) Testimony revealed that a lot of the claimant’s communication is inappropriate. The claimant will say one word that means another thing.
- 13) [REDACTED] explained her findings. The fact that the claimant knew who she was the reason for the finding of intermittent orientation. The daughter acknowledged during the assessment that there are times the claimant is able to get in and out of bed herself and other times she has to help her. The claimant is suppose to use a walker but refuses to use it. She observed the claimant get up from the porch and go in the house to use the bathroom and come back. That is why she determined the claimant needed supervised/assistive device for transferring and walking. A level 4 for communication is garbled to none. The claimant’s communication may have been inappropriate but it was understandable. The daughter reported during the assessment that when it comes to her mother’s bowels there are times she can make it to the bathroom and times she not make it to the bathroom. They put the potty chair over the commode for the claimant to help her get up.
- 14) Testimony from Ms. \_\_\_\_\_ revealed that her mother uses the shelves nailed to the wall in the hallway to walk. Everything is placed where she can walk. Her mother does not like the walker. Her mother may be able to tell her name but she can’t tell you other things such as where she lives, etc.
- 15) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)- Program Eligibility for client:  
  
Applicants for the ADW Program must meet the following criteria to be eligible for the Program:  
  
C. Be approved as medically eligible for NF Level of Care.
- 16) Aged/Disabled Home and Community-Based Services Manual Section 570.1.a – Purpose: The purpose of the medical eligibility review is to ensure the following:  
  
A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

- B. Each applicant/client determined to be medically eligible for A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

17) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria

An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

A. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimer's, or related condition. (Item 25, I and 33, on the PAS 2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).

- Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- Bathing ---- Level 2 or higher (physical assistance or more)
- Grooming--- Level 2 or higher (physical assistance or more)
- Dressing ---- Level 2 or higher (physical assistance or more)
- Continence-- Level 3 or higher (must be total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
- Orientation-- Level 3 or higher (totally disoriented, comatose)
- Transfer----- Level 3 or higher (one person or two person assist in the home)
- Walking----- Level 3 or higher (one person assist in the home)
- Wheeling----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home)

D. Individual has skilled needs in one or more of these areas B (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

- 18) Aged/Disabled Home and Community Based Service Manual # 570.1.c,d:  
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 2005:

- #23 1 point for each (can have total of 12 points) Medical Condition
- #24 1 point Decubitus
- #25 Level 1 - 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 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 – medication administration
- #33 - 1 point if Alzheimer's or other dementia
- #34 - 1 point if terminal

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

### **VIII. CONCLUSIONS OF LAW:**

- 1) The Aged Disabled Waiver policy provides that an individual must be assigned 26 to 44 points to qualify as requiring a Level D in care, which is 155 hours per month in homemaker services. 18 to 25 points indicates a Level C which is for 124 hours per month in homemaker services. The evaluating nurse assigned 19 points, which falls within the Level C of care.
- 2) The Department conceded the diagnosis of dyspnea which would add one additional point.
- 3) No additional point is awarded for decubitus (bed sore) as the claimant did not have decubitus present at the time of the assessment.
- 4) No additional point is awarded for eating as there was no convincing evidence or testimony presented to demonstrate the claimant needs total care for eating.
- 5) No additional point is awarded for bowel incontinence as there was no convincing evidence or testimony presented that demonstrated the claimant is totally incontinent of the bowel.
- 6) No additional point is awarded for communication as the claimant could communicate.

- 7) No additional points are awarded for transferring and walking as it was demonstrated through the testimony and documentation that the claimant needs supervised/assistive device for transferring and walking.
- 8) The testimony and evidence presented during the hearing demonstrates that the claimant is a level 3 for orientation. The only thing the claimant knew was her name and the State Hearing Officer is not totally convinced she knows that all of the time. Testimony revealed this is generally all she knows – her name. An additional point will be added for orientation.
- 9) With a finding of level 3 for orientation and a yes under question #33 for a diagnosis of Alzheimer's or related condition, a point is awarded for mentally unable to vacate.
- 10) There is a total of twenty two (22) points assigned to the claimant. Twenty two (22) points is level of care C which equates to 124 service hours per month.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, it is the finding of the State Hearing Officer that the Department has correctly determined the claimant's level of care according to the information found on the PAS-2005 form. The Department is upheld in the decision to reduce the number of service hours to 124 under the Aged/Disabled Home and Community-Based Services Waiver Program. The action described in the notification letter dated October 18, 2005 will be taken.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision  
Form IG-BR-29



**ENTERED this 3rd Day of August, 2006.**

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**Margaret M. Mann  
State Hearing Officer**