



**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

April 3, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 31, 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 PAS-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  
Libby Boggess, BOSS  
[REDACTED], WVMI  
[REDACTED] Helping Hands  
CCS

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

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

**v.**

**Action Number: 05-BOR-6923**

**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 March 31, 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 March 31, 2006 on a timely appeal filed November 8, 2005. It should be noted that the hearing was originally scheduled for February 14, 2006 but was rescheduled 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. [REDACTED], Claimant (participating by speaker phone).
2. [REDACTED], Helping Hands.
3. [REDACTED] Claimant's homemaker.
4. Libby Boggess, Bureau for Senior Services (BOSS) (participating by speaker phone)
5. [REDACTED] WV Medical Institute (WVMI) R. N. (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. 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 (11 pages).
- D-2 Copy of hearing request received 11-8-05 (2 pages).
- D-3 Copy of PAS-2000 completed 10-3-05 (10 pages).
- D-4 Copy of notification letters dated 10-20-05 and 10-27-05 (2 pages).
- 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-2000 was completed by [REDACTED] of WVMI on 10-3-05 which determined a Level of Care B (Exhibit #D-3).
- 2) Notification was issued to the claimant on 10-20-05 and 10-27-05 (Exhibit #D-4).
- 3) A hearing request was received from the claimant by the Bureau for Medical Services on 11-08-05, by the Board of Review on 12-16-05, and by the State Hearing Officer on 12-21-05 (Exhibit #D-2).
- 4) Ms. Boggess testified about the regulations from the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual.

- 5) [REDACTED] completed the PAS-2000 on 10-3-05 and testified that the claimant was awarded 16 points resulting in Level of Care B for three (3) hours per day or 93 Hours per month.
- 6) Testimony provided during the hearing revealed the areas of dispute to be item #23 a & b (angina rest and angina exertion), item #23 c (dyspnea), item #23 e (paralysis), item #26 a (eating), and item #28 (administration of medication).
- 7) Testimony received at the hearing from the claimant indicated that she has chest pains every once in a while. Testimony from [REDACTED] indicated that the claimant has complained of chest pains and was given nitroglycerin. Testimony from Ms. [REDACTED] indicated that the claimant denied chest pains during the assessment interview and was taking no medication for chest pain. The State Hearing Officer noted that there also was no diagnosis of angina either at rest or exertion and a point cannot be awarded for angina (item #23 a & b).
- 8) Testimony received at the hearing from the claimant indicated that she has shortness of breath (dyspnea) at times and does wheez especially at night. Testimony from [REDACTED] indicated that the claimant has complained of dyspnea to her before. Testimony from [REDACTED] indicated that the claimant denied dyspnea, that she did not notice any dyspnea, and the claimant was on no medication for it. A point cannot be awarded for dyspnea as the claimant is taking no medication for the condition and there is no diagnosis indicating dyspnea (item #23 c).
- 9) Testimony received at the hearing from the claimant indicated that she cannot move her feet and toes as they are paralyzed. Testimony from [REDACTED] indicated that item #37 of the PAS-2000 is marked to show C-5-6 flacid paralysis but the claimant was not issued a point for paralysis under item #23 e. Testimony from [REDACTED] indicated that the claimant denied paralysis to her and that the claimant could move all limbs. A point is awarded for paralysis under item #23 e as flacid paralysis is diagnosed by the physician on the evaluation request form (Exhibit #D-5) and is listed on the PAS-2000 on item #37.
- 10) Testimony received at the hearing from [REDACTED] indicated that the claimant cannot open anything and needs physical assistance with eating. Testimony from Ms. Boggess indicated that meal preparation is not a deficit and testimony from [REDACTED] indicated that the claimant had a paring knife to help open things and had good hand function. A point cannot be awarded for eating (item #26 a).
- 11) Testimony from [REDACTED] indicated that the claimant needs assistance with administering medications as she cannot open lids and cannot draw up her insulin. Testimony from [REDACTED] indicated that the claimant reported to her that the lids are taken of as she uses a paring knife to get the bottles open, that she could draw up her own insulin, and that she takes her medication herself. A point cannot be awarded for administration of medication (item #28).
- 12) 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."

13). 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 (Level of Care).
- 2) The Level of Care is determined by assigning points to qualifying documented medical findings on the PAS-2000.
- 3) The PAS-2000 completed 10-3-05 determined 16 total points for a Level of Care B for three (3) hours per day or 93 hours per month.
- 4) Evidence provided during the hearing supported the awarding of an additional point for item #23 e (paralysis).
- 5) The claimant qualified for 17 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 3rd Day of April, 2006.**

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**Thomas M. Smith**  
**State Hearing Officer**