



**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

April 11, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 4, 2006. 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: Annual re-evaluations for medical necessity for each Waiver participant will be conducted. (Aged/Disabled Home and Community Based Services Manual § 580.2a RE-EVALUATIONS).

The information submitted at your hearing revealed: Your homemaker hours will be reduced from a "C" to a "B" Level of Care.

It is the decision of the State Hearings Officer to UPHOLD 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 – CWVAS, Inc.
[REDACTED] RN – West Virginia Medical Institute
Brian Holstein, LSW – Bureau of Senior Services

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

_____,
Claimant,

v.

Action Number: 05-BOR-7013

**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 April 11, 2006 for Mr. _____. 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 scheduled for April 4, 2006 on a timely appeal filed February 6, 2006.

It should be noted here that the claimant's benefits have been continued at the current "C" level of care pending a hearing decision. A pre-hearing conference was not held between the parties and, Mr. _____ 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:

_____, Stepson/Homemaker – Central West Virginia Aging Services, Inc. (CWVAS, Inc.)*

_____ Case Manager – Central West Virginia Aging Services Inc. (CWVAS, Inc.)*

Brian Holstein, Licensed Social Worker – Bureau of Senior Services (BoSS)

_____, RN – West Virginia Medical Institute (WVMI)

* Participated by conference 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 Mr. _____'s Level of Care be reduced according to the Pre-Admission Screening (PAS) form dated November 14, 2005?

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual Policy § 503 SERVICE OPTIONS LIMITATIONS; § 570.1.b MEDICAL CRITERIA; § 570.1.c LEVELS OF CARE CRITERIA; § 570.1.d LEVELS OF CARE SERVICE LIMITS; and § 580.2a RE-EVALUATIONS

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual Policies
- D-2 PAS dated 11/14/05 with Attached Release of Information
- D-3 Notice of Decision dated 11/17/05
- D-4 Request for Hearing dated 11/23/05
- D-5 Letter from Claimant's Physician, _____, MD dated 02/24/06

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1) This issue involves a proposed reduction in homemaker hours due to a Level of Care Determination. The PAS dated November 14, 2005 indicates Mr. _____'s homemaker hours should be reduced from a Level "C" (124 hours per month) to a Level "B" (93 hours per month). Those present during the assessment were Mr. _____, Claimant; Mr. _____, Homemaker and; Mrs. _____, RN.

The Department issued a Notice of Decision (Exhibit D-3) to Mr. _____ on November 17, 2005. The letter stated in part, "The number of homemaker service hours approved is based on your medical needs, and cannot exceed 93 hours per month." Mr. _____ requested a fair hearing on November 23, 2005 (Exhibit D-4).

2) Mr. Brian Holstein, LSW reviewed the Level of Care policy (Exhibit D-1). There were no questions for Mr. Holstein.

3) Mrs. _____ RN reviewed the Pre-Admission Screening (PAS) form dated November 14, 2005 (Exhibit D-2) in the following manner:

Question #23 – (c) Dyspnea; (h) Pain; (k) Mental Disorder (Depression); and (l) Other (Hypertension) **Total Points = 4.**

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

Question #25 – Functional Levels:

Eating – 2	1 Point	
Bathing – 2	1 Point	
Dressing – 2	1 Point	
Grooming – 2	1 Point	
Cont/Bladder – 2	1 Points	
Cont/Bowel – 1	0 Points	
Orientation – 2	1 Point	
Transferring – 3	2 Point	
Walking – 2	1 Point	
Wheeling – 1	0 Points	
Vision – 2	0 Points	
Hearing – 2	0 Points	
Communication – 1	0 Points	Total Points = 9

Question #26 – Professional and Technical Care Needs: No. **Total Points = 0**

Question #27 – Capable of administering own medications: No. **Total Points = 1**

Question #33 – Alzheimer's, Dementia or related condition: No. **Total Points = 0**

Question #34 – Terminal – No. **Total Points = 0**

The total number of points from Mr. _____'s Pre-Admission Screening (PAS) form = 14 points which equates to a Level "B" Care (93 hours per month).

4) The only areas of dispute were with Questions #23 *Arthritis* and #33 *Dementia*. A letter from Mr. _____'s physician (Exhibit D-5), documents the diagnosis of Dementia, but does not do so for Arthritis. **Mr. _____ will receive one additional point for Dementia. He will not receive a point for Arthritis.**

5) Mr. _____'s Level of Care points will increase from 14 to 15. **The additional point for Dementia will not maintain Mr. _____ at a "C" Level of Care. Mr. _____'s Level of Care Service Limits will decrease from a "C" level to a "B" level of care.**

**6) Aged/Disabled Home and Community Based Services Manual § 503
SERVICE OPTIONS LIMITATIONS:**

Medical Adult Day Care is an optional service. Case Management is also an optional service, as a client may choose Consumer-Directed Case Management instead. Homemaker is not an optional service. A client in the ADW Program must receive homemaker services to remain eligible for the program. Homemaker services are limited to a maximum number of hours that are determined by the client's Level of Care (LOC). The notification of medical eligibility from the Quality Improvement Organization (QIO) will specify the maximum hours of service a client may receive in a month. If it is believed that the client's LOC has changed, the Homemaker RN submits a request for a change of level of care to Bureau for Medical Services.

**7) Aged/Disabled Home and Community Based Services Manual § 570.1.b
MEDICAL CRITERIA:**

An individual must have five deficits on the PAS 2005 to qualify medically for the ADW 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). **Represents a change in policy effective November 1, 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). **Represents a change in policy effective November 1, 2005.**

Orientation - Level 3 or higher (totally disoriented, comatose)

Transfer - Level 3 or higher (one person or two persons 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 (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations. (Item 26 on the PAS 2005).

E. 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 some one other than the recipient at all times.

**8) 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 2005:

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

Total number of points possible is 44.

**9) 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

10) Aged/Disabled Home and Community Based Services Manual § 580.2a RE-EVALUATIONS states in part:

Annual re-evaluations for medical necessity for each Waiver participant will be conducted.

VIII. CONCLUSIONS OF LAW:

1) Aged/Disabled Home and Community Based Services Manual § 580.2a RE-EVALUATIONS states in part:

Annual re-evaluations for medical necessity for each Waiver participant will be conducted.

2) 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 2005:

- #23 1 point for each (can have total of 12 points) Medical Condition
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- #33 1 point if Alzheimer's or other dementia
- #34 1 point if terminal

Total number of points possible is 44.

3) 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

4) The only areas of dispute were with Questions #23 *Arthritis* and #33 *Dementia*. A letter from Mr. _____'s physician documents the diagnosis of Dementia, but does not do so for Arthritis. Mr. _____ will receive one additional point for Dementia. He will not receive a point for Arthritis.

5) Mr. _____'s Level of Care points will increase from 14 to 15. The additional point for Dementia will not maintain Mr. _____ at a "C" Level of Care. Mr. _____'s Level of Care Service Limits will decrease from a "C" level to a "B" level of care.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD 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 11th Day of April 2006.

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