



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

February 24, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 23, 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 C which amounts to four (4) hours per day or 124 hours per month.

It is the decision of the State Hearings Officer to reverse 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. The claimant is eligible for Level of Care C in the amount of four (4) hours per day or 124 hours per month.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Libby Bogges, BOSS
_____, WVMI
SWCA
_____, Claimant's homemaker

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

_____,

Claimant,

v.

Action Number: 05-BOR-7089

**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 February 23, 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 February 23, 2006 on a timely appeal, filed December 6, 2005.

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 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 a skilled nursing facility (if not for the waiver services).

III. PARTICIPANTS:

1. _____, Claimant.

2. [REDACTED], Claimant's homemaker.
3. [REDACTED] R. N. Supervisor, [REDACTED] Home Health.
4. Libby Boggess, Bureau for Senior Services (BOSS) (testifying by speaker phone)
5. [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 (11 pages).
- D-2 Copy of hearing request received 12-6-05 (2 pages).
- D-3 Copy of PAS-2005 completed 11-22-05 (7 pages).
- D-4 Copy of notification letter 12-2-05.
- D-5 Copy of reevaluation request.
- D-6 Copy of appointment letter for PAS.

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 11-22-05 which determined a Level of Care B.
- 2) The claimant requested a hearing on 12-6-05 and a hearing was convened on 2-23-06.
- 3) The findings of the PAS-2005 dated 11-22-05 resulted in 17 total points which resulted in Level of Care B for three (3) hours per day or 93 hours per month.
- 4) Ms. Boggess testified about the regulations from the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual.

- 5) Ms. [REDACTED] testified that she completed the PAS-2005 on 11-22-05 and presented her findings (Exhibit #D-3) and testified that she reviewed the PAS-2005 with those present, including the claimant and [REDACTED] the homemaker, and that all agreed with the findings.
- 6) Ms. [REDACTED] testified that Mr. _____ has incontinence of both bladder and bowel, that he is not able to use the wheelchair by himself, that he cannot open the pill bottles and set up medication but that he can put them in his mouth, that he takes Zoloft for anxiety attacks, that he has paralysis on his left side from a CVA, and that he cannot vacate the building in an emergency.
- 7) Ms. [REDACTED] testified that the incontinence issue is embarrassing to Mr. _____, that he asks her not to say anything about it and she abides by his request, that it is a private matter to him but he wears diapers, that they did tell Ms. [REDACTED] that he had no incontinence of bladder or bowel but he has accidents 2-3 times a day, and that he did ask her to talk about the incontinence issue at the hearing.
- 8) Ms. Boggess testified that it was made clear to Mr. _____ and Ms. [REDACTED] that it was important to give truthful information and that it would have been less embarrassing to discuss the incontinence issue with Ms. [REDACTED] than to discuss it at a hearing with more people.
- 9) Ms. [REDACTED] testified that Mr. _____ told her that he could wheel himself in the home and needed no help getting through doorways, that Mr. _____ told her that he had left side weakness but was not paralyzed, that he said he did not use his left side but that she did not check to see if he could use it.
- 8) The PAS-2005 completed on 11-22-05 showed the following points: item #23-5 points, item #24-0 points, item #25 a-1 point, b-2 points, c-2 points, d-2 points, e-0 points, f-0 points, g-0 points, h-2 points, i-2 points, item #26-0 points, #27-0 points, item #33-0 points, item #34-0 points, inability to vacate the building in an emergency 1 point. Total of 17 points for Level of Care B.
- 8) The areas of dispute with the findings of the PAS-2005 for which additional points can be awarded included paralysis (item 23 e), bladder and bowel incontinence (items 25 e and f), wheeling (item 25 j), and medication administration (item 27). The State Hearing Officer finds that no additional point can be awarded for paralysis (item 23 e) as it appears that left side weakness was present but there was no evidence that paralysis existed. The State Hearing Officer finds that two (2) additional points can be awarded for incontinence of the bladder and bowel (items 25 e and f) as the evidence and testimony show that at least occasional bladder and bowel incontinence exists and those items merit a level II finding for occasional incontinence. While the claimant and homemaker reported to Ms. [REDACTED] on 11-22-05 that no incontinence existed, the State Hearing Officer accepts the testimony provided during the hearing that occasional incontinence does occur. The State Hearing Officer finds that an additional point can be awarded for wheeling (item 25 j) as the evidence and testimony showed that the claimant has left side weakness which could prevent him from wheeling himself in the home. The health assessment on page 1 of the PAS-2005 shows that Ms. [REDACTED] was aware of the left side weakness and that the claimant told her his left hand and leg were useless. This indication should have prompted a more thorough examination by Ms. [REDACTED] of the claimant's ability to use the wheelchair by himself and a point is awarded for wheeling. The State Hearing

Officer finds that no additional point can be awarded for medication administration as the evidence and testimony showed that the claimant can place the medications in his mouth. The State Hearing Officer finds that the claimant qualifies for three (3) additional points which brings the claimant to 20 points and qualifies him for Level of Care C for four (4) hours a day or 124 hours per month.

9). 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."

10). 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 20 points which translates into Level of Care C and four (4) hours per day and 124 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 C for four (4) hours per day or 124 hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of February, 2006.

**Thomas M. Smith
State Hearing Officer**