



**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

May 19, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 28, 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 that after review of the current PAS-2005, you meet the criteria for level of care B which equates to 93 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 B 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
_____, CWVAS
Libby Boggess, BoSS
_____, WVMI

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

Claimant,

v.

Action Number: 05-BOR-7250

**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 28, 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 28, 2006 on a timely appeal, filed December 19, 2005.

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
_____, Case Manager, CWVAS
_____, Homemaker
Libby Boggess, RN, BoSS (By Telephone)
_____, RN, WVM (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 November 28, 2005
- D-3** Notice of Decision dated December 8, 2005

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 62-year-old female. She is an active participant in the A/DW program and her eligibility was undergoing an annual evaluation on November 28, 2005.
- 2) A WV Medical Institute nurse, _____ completed a Pre-Admission Screening (PAS) in Ms. _____'s home with the claimant, her case manager and her homemaker present. Ms. _____ was not able to participate in the hearing and the PAS findings were discussed by _____ another WVM (By Telephone) nurse. This was agreed to by the claimant. 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 C to a level B with 15 points awarded.
- 3) This claimant has primary diagnoses listed on the referral form as hyperparathyroidism and blindness. The claimant's doctor later confirmed an additional diagnosis of peripheral neuritis.

- 4) The November 28, 2005 PAS assigned this claimant with 15 points in determining the level of care required. The evaluating nurse assigned four (4) points in the areas of Medical Conditions/Symptoms and eleven (11) points in the area of functional levels. There were no points assigned under the claimant's ability to vacate in an emergency because a level 2 was assessed under walking – supervised/assistive device.
- 5) The issue addressed by the claimant was in the area of hearing. Ms. _____ stated that if you are blind and lose your hearing, it is sensory deprivation in a way. She can't see or hear. Her sense of direction is gone and it is frightening at times.
- 6) The evaluating nurse determined that under hearing, the claimant's hearing was impaired/correctable. In evaluating the claimant's ability to hear, it was determined that the hearing aids were correcting her hearing and allowing her to communicate and respond to questions.
- 7) The issue addressed by Ms. [REDACTED] was in the area of the claimant's ability to vacate. Ms. _____ is totally blind and lives alone.
- 8) Ms. Boggess explained the policy for awarding points for vacating. To be physically unable you have to be a level 3 under walking. In order to be mentally unable, you have to be a level 3 or greater under orientation and have a diagnosis of some sort of dementia.
- 9) 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.
- 10) 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.

11) 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.

12) 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 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 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 18 to 25 points to qualify as requiring a Level C in care, which is 124 hours per month in homemaker services. 10 to 17 points indicates a Level B which is for 93 hours per month in homemaker services. The evaluating nurse assigned 15 points, which falls within the Level B of care.
- 2) No additional point can be awarded for hearing. The claimant was assessed as impaired/correctable. It was demonstrated that she is able to hear and communicate.
- 3) Policy reads as follows when determining the client's ability 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. The claimant is blind. However, she was correctly assessed under walking as needing supervised/assistive device (level 2) in the home. There was no testimony or evidence to support her needing one person assistance (level 3) in the home for walking.
- 4) There is no change in the points assigned to the claimant. Fifteen (15) points is level of care B which equates to 93 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 93 under the Aged/Disabled Home and Community-Based Services

Waiver Program The action described in the notification letter dated December 8, 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 19th Day of May, 2006.

**Margaret M. Mann
State Hearing Officer**