



**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

June 15, 2006

Re: _____

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 14, 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 remain at a "D" Level of Care.

It is the decision of the State Hearings Officer to REVERSE 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: 06-BOR-818

**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 June 15, 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 originally scheduled for April 4, 2006 on a timely appeal filed January 12, 2006. The hearing was rescheduled due to a death in the Claimant's family. The hearing finally convened on June 14, 2006.

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

_____, Mother of _____
_____, Case Manager – Central West Virginia Aging Services Inc. (CWVAS, Inc.)
_____, RN – Kelly Home Care
Brian Holstein, Licensed Social Worker – Bureau of Senior Services (BoSS)
_____, RN – West Virginia Medical Institute (WVMI)

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 _____'s Level of Care be reduced according to the Pre-Admission Screening (PAS) form dated January 9, 2006?

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual Policy § 503 SERVICE OPTIONS LIMITATIONS; § 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 01/09/06 with Attached Release of Information
- D-3 Notice of Decision dated 01/10/06
- D-4 Request for Hearing received by Bureau for Medical Services dated 01/12/06
- D-5 Letter from Claimant's Physician, _____ 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 January 9, 2006 indicates _____'s homemaker hours should be reduced from a Level "D" (155 hours per month) to a Level "C" (124 hours per month). Those present during the assessment were Mrs. _____; _____; and Ms. _____, RN.

The Department issued a Notice of Decision (Exhibit D-3) to _____ on January 10, 2006. The letter stated in part, "The number of homemaker service hours approved is based on your medical needs, and cannot exceed 124 hours per month." Mrs. _____ requested a fair hearing on behalf of her daughter on January 10, 2006. The request was received by the Bureau for Medical Services on January 12, 2006 (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) Ms. _____, RN reviewed the Pre-Admission Screening (PAS) form dated January 9, 2006 (Exhibit D-2)

4) The areas of dispute were with Questions #23 (d) Significant Arthritis; (f) Dysphagia; and Question #25 (e) Continence of Bladder.

There was no medical verification for Significant Arthritis and no points will be rewarded. Mrs. _____ testified that her daughter has difficulty swallowing. This is credible testimony and a point will be awarded for Dysphagia. Ms. _____ testified that she should have given _____ one point for Spina Bifida as listed under Question #23 (l) Other. A point will be awarded based on Ms. _____ testimony.

Ms. _____, RN listed _____ as a Level 4 (1 point) instead of a Level 3 Total Bladder Incontinence (2 points), because she had a Catheter. Ms. _____ testimony was based on her training and policy. Under questioning by the State Hearing Officer, Mr. _____ could not provide the policy to justify a lower rating. It should be noted that Ms. _____ presented the State Hearing Officer with a copy of additional policy regarding Bladder Incontinence after the hearing. The policy will not be considered since it was not presented during the hearing. Mrs. _____ testified that her daughter's Catheter must be emptied every two hours. In light of _____ being Total Care in Eating; Bathing; Dressing; Grooming; and Bowel Incontinence, she will receive 2 points for Total Bladder Incontinence.

5) _____'s Level of Care points will increase from 23 to 26. Additional points were awarded as follows: One point for Dysphagia; one point for Other (Spina Bifida); and an additional point for Total Incontinence. _____ will remain at a "D" 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.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.

**8) 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

9) 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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- #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.

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) _____'s Level of Care points will increase from 24 to 26. Additional points were awarded as follows: One point for Dysphagia and two points for Total Incontinence. _____ will remain at a "D" Level of Care.

IX. DECISION:

It is the decision of this State Hearing Officer to REVERSE 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 15th Day of June 2006.

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