



**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

August 20, 2007

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 17, 2007. 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 PS-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  
Kay Ikerd, BOSS  
[REDACTED] WVMI  
[REDACTED] CCIL

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 07-BOR-1425**

**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 August 17, 2007 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 August 17, 2007 on a timely appeal, filed April 30, 2007. It should be noted that the hearing was originally scheduled for July 3, 2007 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. \_\_\_\_\_, Claimant.
2. \_\_\_\_\_ Casemanager, CCIL.
3. \_\_\_\_\_, Caregiver, Area Connect Home Helpers.
4. Kay Ikerd, R.N., Bureau for Senior Services (BOSS) (participating by speaker phone).
5. \_\_\_\_\_ R.N., WV Medical Institute (WVMI) (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:**

Chapter 500 of Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03, Sections 503.2, 503.2.1, 503.2.2.

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- #1 Copy of regulations (3 pages).
- #2 Copy of PAS-2000 4-11-07 (8 pages).
- #3 Copy of notification letter 4-20-07.

(It should be noted that some documents were provided which were not entered as evidence during the hearing and these documents were marked as "not admitted" for identification purposes only.)

##### **Claimant's Exhibits:**

None.

#### **VII. FINDINGS OF FACT:**

- 1) The claimant was an active recipient of Title XIX Aged/Disabled Waiver Services Program when a reevaluation request was received and a new PAS-2000 was completed by \_\_\_\_\_ of WVMI on 4-11-07 which determined a Level of Care B (Exhibit #2).
- 2) The claimant was notified on 4-20-07 of the Level of Care determination (Exhibit #3) which resulted in a decrease in the number of homemaker hours from four (4) hours per day to three (3) per day and a hearing request was received by the Bureau for Medical

Services on 4-30-07, by the Board of Review on 5-18-07, and by the State Hearing Officer on 5-23-07.

- 3) The findings of the PAS-2000 dated 4-30-07 resulted in 16 total points which resulted in Level of Care B for three (3) hours per day or 93 hours per month.
- 4) The representative from BOSS provided testimony about the regulations from the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual (Exhibit #1) and entered evidence listed in Section VI.
- 5) The R.N. from WVMi presented her findings from the PAS-2000 completed on 4-30-07 which resulted in 16 total points for Level of Care B (Exhibit #2).
- 6) The claimant testified that she has difficulty swallowing but not too often, that she has chest pain from time to time at rest and on exertion, that she has arthritis as her left hip was replaced, that she takes plavix, that she was given nitroglycerin about four (4) years ago (it should be noted that the claimant presented a bottle of nitroglycerin which contained her name but did not contain the name of the physician or any dates), that she does not remember the R. N. from WVMi asking her questions about chest pain.
- 7) The Casemanager from CCIL testified that the claimant has angina at rest and on exertion and has arthritis and that a doctor wrote a statement on 8-10-07 to that effect (it should be noted that the statement from the doctor was objected to by the R. N. from BOSS and the document was not admitted as evidence as it was not provided at least ten (10) days prior to the hearing as required on the hearing appointment notification letter sent on July 2, 2007).
- 8) The R. N. from WVMi testified that she asked about arthritis and the claimant told her she had arthritis and that she called the claimant's doctor office and was told that there was no diagnosis of arthritis in the claimant's record and a point could not be given, that she asked about angina at rest or exertion and was told by the claimant that she did not have angina at rest or exertion, that she routinely asks all the questions and documents the responses on the day of the assessment.
- 9) The R. N. from BOSS testified that the claimant's testimony about the Nitroglycerin should not be admitted as there was no prescription presented and the claimant did not report to the R. N. from WVMi that she had angina (it should be noted that the State Hearing Officer ruled that the testimony from the claimant would be allowed but the value of such would be determined by the State Hearing Officer).
- 10) The only areas of dispute with the findings of the PAS-2000 for which additional points could be awarded included item #23 for arthritis, angina at rest or exertion, and swallowing. The State Hearing Officer finds that no additional points can be awarded for arthritis as there was no documentation or medication prescribed by a medical professional or medicine prescribed by a medical professional. In regard to angina, the State Hearing Officer finds that the testimony of the R. N. from WVMi was credible and that the claimant did not report to her that she had angina at rest or exertion. While the claimant showed that she has nitroglycerin tablets which were given to her four (4) years ago, she testified during the hearing that she had angina from time to time and that she does not remember the R. N. from WVMi asking her about angina. The State

Hearing Officer finds that the claimant did not report to the R. N. from WVMi that she had angina and additional points cannot be awarded for angina. In regard to swallowing, the claimant testified that she sometimes has trouble swallowing but not often. The State Hearing Officer finds that there was no documentation from a medical professional and no medication being given for swallowing and an additional point cannot be awarded for swallowing.

- 11). Title XIX Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (Exhibit #1): There will be four levels of care for clients of ADW homemaker services. Points will be determined based on the following sections of the PAS:

- #23- Medical Conditions/Symptoms- 1 point for each (can have total of 12 points) (must be based on medical evidence presented by appropriate medical professionals)
- #24- Decubitis- 1 point
- #25- 1 point for b., c., or d.
- #26 Functional abilities
  - Level 1- 0 points
  - Level 2- 1 point for each item a. through i.
  - Level 3- 2 points for each item a. through m.; i. (walking) must be equal to or greater than Level 3 before points are given for j. (wheeling)
  - Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.
- #27 Professional and Technical Care Needs- 1 point for continuous oxygen
- #28 Medication Administration- 1 point for b. or c.
- #34- Dementia- 1 point if Alzheimer's or other dementia
- #34- Prognosis- 1 point if terminal

The total number of points allowable is 44.

#### **LEVELS OF CARE SERVICE LIMITS**

- Level A- 5 points to 9 points- 2 hours per day or 62 hours per month
- Level B- 10 points to 17 points- 3 hours per day or 93 hours per month
- Level C- 18 points to 25 points- 4 hours per day or 124 hours per month
- Level D- 26 points to 44 points- 5 hours per day or 155 hours per month

### **VIII. CONCLUSIONS OF LAW:**

- (1) Regulations in Title XIX Aged/Disabled Waiver Policies and Procedures Manual Section 503.2.1 states that the Level of Care is determined by the number of points the individual receives on the PAS assessment tool.
- (2) The claimant received a total of 16 points from the PAS-2000 completed on 4-11-07.
- (3) The evidence and testimony presented during the hearing resulted in no additional points awarded to the claimant.
- (4) The claimant's total number of points remains at 16 which results in Level of Care B for three (3) hours per day or 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 20th Day of August, 2007.**

---

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