



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
State Board of Review  
2699 Park Avenue, Suite 100  
Huntington, West Virginia 25704  
January 28, 2005

Joe Manchin III  
Governor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Dear Mr. \_\_\_\_\_,

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 26, 2005. 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 Home and Community Based Waiver Services Program case.

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 and benefit levels for the Aged/Disabled Home and Community Based Services Waiver 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-2000 submitted to West Virginia Medical Institute (Aged/Disabled Home and Community-Based Waiver Services, Policy 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 (3) hours per day or 93 hours per month.

It is the decision of the State Hearing Officer to uphold the action of the Department (WVMI) to determine Level B for homemaker hours in the amount of (3) hours per day or 93 hours per month in the Title XIX Aged/Disabled Home and Community Based Waiver Services Program.

Sincerely,

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

cc: Board of Review  
Kay Ikerd, BOSS  
Julie Foster, WVMI  
[REDACTED] First Care Services, Inc.

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 26, 2005 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 convened on January 26, 2005 on a timely appeal filed August 26, 2004. It should be noted that the hearing was originally scheduled for November 22 and December 8, 2004 but was rescheduled both times at claimant's request.

It should be noted here that any benefits under the Aged/Disabled Home and Community Based Services Waiver Program have been continued pending the results of this hearing. It should also be noted that Kay Ikerd from the Bureau for Senior Services (BOSS) participated in the hearing by speaker phone upon agreement of the claimant.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Aged/Disabled Home and Community Based Services Waiver is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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, First Care Services.
3. \_\_\_\_\_ RN Supervisor, Pro-Careers.
4. \_\_\_\_\_, Claimant's girlfriend (not placed under oath).
5. Julie Foster, RN, WVMI.
6. Kay Ikerd, Bureau for Senior Services.

Presiding at the hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED

The question to be decided is whether WVMI proposed the correct action to determine the claimant's level of care to be level B and number of homemaker hours to be three (3) hours per day or 93 hours per month.

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V. APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-1-03.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Exhibit #1 Copy of form IG-BR-29.

- " #2 Copy of regulations (5 pages).
- " #3 Copy of hearing request.
- " #4 Copy of hearing appointment letter.
- " #5 Copy of PAS-2000 reviewed 8-4-04 (5 pages).
- " #6 Copy of Medical Necessity Reevaluation Request (2 pages).

" #7 Copy of notification letter 8-12-04 (2 pages).

Exhibit #C1-1 Copy of Aged/Disabled Waiver Manual Chapter 500 (81 pages).

" #C1-2 Copy of PAS-2000 8-4-04 (6 pages).

" #C1-3 Copy of notification letter 8-12-04 (2 pages).

" #C1-4 Copy of Medical Necessity Reevaluation Request (2 pages).

" #C1-5 Copy of contact sheet.

" #C1-6 Copy of informed consent.

" #C1-7 Copy of PAS-2000 completed 7-14-03 (4 pages).

" #C1-8 Copy of PAS-2000 completed 7-29-02 (not used) (3 pages).

" #C1-9 Copy of PAS-2000 completed 7-29-02 (3 pages).

" #C1-10 Copy of PAS-2000 approved 8-15-02 (7 pages).

" #C1-11 Copy of PAS-2000 approved 9-5-01 (4 pages).

" #C1-12 Copy of PAS-2000 approved 10-24-00 (5 pages).

" #C1-13 Copy of packet from BOSS listed as Exhibit #1 through #7 (18 pages).

" #C1-14 Copy of hearing appointment notices (2 pages).

" #C1-15 Copy of letter from Legal Aid of WV 8-20-04.

" #C1-16 Copy of notification letter 8-12-04.

" #C1-17 Copy of fax from [REDACTED] to [REDACTED] (7 pages).

" #C1-18 Copy of grievance procedure (2 pages).

" #C1-19 Copy of Civil Action No. 3:04 (26 pages).

" #C1-20 Copy of Civil Action No. 3:04-0982 (23 pages).

" #C1-21 Copy of letter from [REDACTED], MD, 1-17-05.

## VII. FINDINGS OF FACT

1. The claimant was an active recipient of the Title XIX Aged/Disabled Wavier Services Program (ADW) when a request for reevaluation of medical eligibility was submitted by First Care Services on 7-7-04 (Exhibit #6 and #C1-4).

2. A PAS-2000 completed by Julie Foster, R. N. from WVMI, on 8-4-04 determined the claimant to be eligible for Level of Care B which translated to three (3) hours per day or 93 hours per month (Exhibit #5 & #C1-2).

3. The findings of the PAS-2000 dated 8-4-04 were as follows: item #23 included Significant Arthritis, Paralysis, Pain, and other (spasms) for a total of four (4) points, that item #24 showed no decubitus present for zero (0) points, that item #25 showed that the claimant was able to vacate the building in an emergency for (1) point (it should be noted that Ms. [REDACTED] originally testified that no points were awarded for this category), that item #26 showed self-prompting needed with eating (a) for zero (0) points, physical assistance needed with bathing (b), dressing (c) and grooming (d) for one (1) point each, that there was a catheter used for bladder (e) for one (1) point, that there was occasional bowel incontinence (f) for one (1) point, that there was no disorientation (g) for zero (0) points, that supervised/assistive device was needed for transferring

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(h) for one (1) point, that two-person assistance was needed with walking (i) for two (2) points, that the claimant wheels independently (j) for one (1) point, that vision (k) was not impaired for zero points and hearing (l) was impaired and not correctable for two (2) points, that communication (m) was not impaired for zero (0) points, that the only professional/technical needs (#27) was for skin care for zero (0) points, that he is capable of administering medications for zero (0) points, that there was no alzheimer's/dementia or related condition for zero (0) points (item #34), that prognosis was stable for zero (0) points, and that the total number of points was 16 which qualified for Level B care or three (3) hours a day and 93 hours per month (it should be noted that Ms. Foster originally testified that the claimant's total number of points was 15 but then testified that a point should have been awarded for vacating the building with supervision).

4. Mr. [REDACTED] testified that although he is a vegetarian and eats no meat, he has to have some food cut up every other day, that he did not tell Ms. Foster that he could vacate the building in a few minutes but did say that he could transfer out of his bed to the wheelchair in a few minutes, that he requested assistance from Legal Aid but was denied, that he should be wearing glasses but doesn't, that the previous system of evaluating eligibility for the program included a physician, and that he questions the method for collecting information.

5. Ms. [REDACTED] testified that Mr. [REDACTED] is in and out of the hospital, that when he has muscle spasms, he would be unable to transfer, that at times, he has to have food cut up, that the category of vacating the building in an emergency should be awarded a point, and that she was originally notified that Mr. [REDACTED]

was not eligible because the category of walking was not marked with Level IV and that she contacted WVMI and the decision was reversed.

6. Ms. [REDACTED] testified that Mr. [REDACTED]'s condition was digressing.

7. Ms. Foster testified that she went over the information from the PAS-2000 with Mr. [REDACTED] and he had no disagreements, that she asked if he needed assistance with feeding and he said it was not a problem, that he stated it would not be a problem to vacate the building in an emergency.

8. The areas of disagreement that the claimant and his witnesses had with the PAS-2000 involved vacating the building in an emergency (#25), eating (26a), transferring (26h), and vision 26(k). The claimant was awarded a point for #25 and only one (1) point is awarded whether supervision is needed or if the individual is physically or mentally unable to vacate according to Manual Section 570.1.c Levels of Care Criteria (Exhibit #2). Testimony from the claimant and Ms. [REDACTED] indicated that the claimant needs food cut up but the claimant does not eat meat and it would appear unlikely that other foods would need to be cut often enough to be awarded Level II. In addition, the claimant did not mention that he needed food cut up during the interview with Ms. Foster on 8-4-04. In regard to transferring, Ms. [REDACTED] testified that when the claimant has spasms, he would be unable to transfer but did not address the frequency of the spasms and again, the claimant did not mention inability to transfer while having spasms during the interview on 8-4-04. In regard to vision, the claimant testified that he should wear glasses but does not but this was not reported during the interview on 8-4-04.

9. PAS-2000 approved 8-4-04 (Exhibit #5) showed the following points: Item #23-4 points, item #24-0 points, item #25-1 point, item #26 a-0 points, b-1 point, c-1 point, d-1 point, e-1 point, f-1 point, g-0 points, h-1 point, i-2 points, j-1 point, k-0 points, l-2 points, m-0 points, #27-0 points, #28-0 points, #34-0 points, #35-0 points. Total points-16 for Level B.

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Item 23 4 points  
" 24 0 point  
" 25 1 "  
" 26 11 "

#### CONCLUSIONS OF LAW

1. Policies and Procedures Manual, 11-1-03 states, in part, that applicants "must be approved as medically eligible for NF level of care".

2. Policies and Procedures Manual Section 570.1c states, in part

#### "LEVEL 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)  
#24 - 1 point  
#25 - 1 point for B, C, or D  
#26 - Level I - 0 points  
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  
#27 - 1 point for continuous oxygen  
#28 - 1 point for Level B or C  
#34 - 1 point if Alzheimer's or other dementia  
#35 - 1 point if terminal."

3. Policies and Procedures Manual Section 570.1d 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

**VIII. DECISION**

Based on the evidence and testimony presented, I must uphold the action of the Department (WVMI) to determine Level of Care B which results in three (3) hours per day or 93 hours per month of homemaker hours in the Aged/Disabled Home and Community Based Waiver Services case. WVMI reviewed a PAS-2000 on 8-4-04 and arrived at 16 total points which resulted in a Level of Care B determination which translates into three (3) hours per day or 93 hours per month. During the hearing, testimony on behalf of the claimant revealed some differences in interpretation on behalf of the claimant in regard to the categories of eating, transferring, vision, and vacating the building in an emergency but the State Hearing Officer was convinced by Ms. Foster's testimony that her findings were accurate. Therefore, the State Hearing Officer must uphold the action of the Department (WVMI) to determine Level of Care B which results in three (3) hours per day or 93 hours per month.

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**IX. RIGHT OF APPEAL**

See Attachment.

**X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.