



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  
April 29, 2005

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

Dear Ms. \_\_\_\_\_,

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 28, 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 three (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 three (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  
Kathy Gue, WVMI  
SCAC

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 April 28, 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 April 28, 2005 on a timely appeal filed February 9, 2005.

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 all parties participated in the hearing by speaker phone at the request 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's homemaker.
2. Kathy Gue, West Virginia Medical Institute (WVMI) R.N.
3. Kay Ikerd, Bureau for Senior Services (BOSS).

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 took 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.

### **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 regulations (5 pages).  
" #2 Copy of hearing request received 2-9-05.  
" #3 Copy of PAS-2000 reviewed 1-11-05 (4 pages).  
" #4 Copy of notice of decision 1-25-05.

Page 2

Exhibit #5 Copy of memorandum from \_\_\_\_\_ 11-1-04 (2 pages).

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

1. The claimant was an active recipient of the Title XIX Aged/Disabled Wavier Services Program (ADW) when a reevaluation of medical eligibility was completed by West Virginia Medical Institute (WVMI) on 1-11-05 (Exhibit #3).

2. A PAS-2000 completed by Kathy Gue, R. N. from WVMI, on 1-11-05 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 #3).

3. The findings of the PAS-2000 dated 1-11-05 (Exhibit #3) were as follows: item #23 included Dyspnea, Significant Arthritis, Dysphagia, Asphasia, and Pain for a total of five (5) points, that item #24 showed no decubitus present for zero (0) points, that item #25 showed that the claimant was able to independently vacate the building for zero (0) points, that item #26 showed physical assistance needed with eating (a) for one (1) point, physical assistance needed with bathing (b), dressing (c) and grooming (d) for one (1) point each, that there was incontinence of bladder (e) for two (2) points, that there was no incontinence of bowel (f) for zero (0) points, that there was no disorientation (g) for zero (0) points, that supervised assistance was needed for transferring (h) for one (1) point, that assistive device/supervision was needed with walking (i) for one (1) point, that no wheelchair was needed (j) for zero (0) points, that vision was not impaired for zero (0) points, that hearing (l) and communication (m) were impaired but correctable for zero (0) points, that there were no professional/technical needs (#27) for zero (0) points, that she 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 deteriorating for zero (0) points, and that the total number of points was 13 which qualified for Level B care or three (3) hours a day and 93 hours per month.

4. Ms. [REDACTED] testified that the claimant has to have food pureed and soft, that she uses a walker, that her medications are put out for her, that she falls all the time, that she cannot cook, that she cannot do anything for herself, that she has to be put in the bathtub, that she wets herself, that her condition is getting worse, and that she needs more hours, especially on the weekends.

5. PAS-2000 approved 1-11-05 (Exhibit #3) showed the following points: Item #23-5 points, item #24-0 points, item #25-0 points, item #26 a-1 point, b-1 point, c-1 point, d-1 point, e-2 points, f-0 points, g-0 point, h-1 point, i-1 point, j-0 points, k-0 points, l-0 points, m-0 points, #27-0 points, #28-0 points, #34-0 points, #35-0 points. Total points-13 for Level B.

Item 23 5 points  
" 24 0 point  
" 25 0 "  
" 26 8 "  
" 28 0 ".

6. There were no areas of dispute for which additional points could be awarded and the claimant has been correctly determined to be eligible for Level of Care B for three (3) hours per day or 93 hours per month.

#### 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.

Page 3

#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
D	26-44	5	155"

#### **VIII. DECISION**

Based upon 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.

#### **IX. RIGHT OF APPEAL**

See Attachment.

#### **X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.