



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 C for homemaker hours in the amount of four (4) hours per day or 124 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 D which amounts to five (5) hours per day or 155 hours per month.

It is the decision of the State Hearing Officer to reverse the action of the Department (WVMI) to determine Level C for homemaker hours in the amount of four (4) hours per day or 124 hours per month in the Title XIX Aged/Disabled Home and Community Based Waiver Services Program. You are eligible for Level of Care D in the amount of five (5) hours per day or 155 hours per month.

Sincerely,

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

cc: Board of Review
Kay Ikerd, BOSS
Kim Sang, WVMI
_____, SCAC
_____, Pro-Careers

NAME: _____

ADDRESS: _____
Huntington, WV 25701

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 3, 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 the claimant's representative (_____), Kay Ikerd from the Bureau for Senior Services (BOSS), and Kim Sang from West Virginia Medical Institute (WVMI) participated in the hearing by speaker phone at the 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's sister.
2. _____, Pro-Careers.
3. _____, SCAC.
4. Kim Sang, WVMI R.N.
5. Kay Ikerd, 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 C and number of homemaker hours to be four (4) hours per day or 124 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 2-3-05.

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" #3 Copy of PAS-2000 reviewed 12-1-04 (4 pages).
" #4 Copy of notice of decision 1-25-05.
" #5 Copy of Medical Necessity Reevaluation request.

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 12-1-04 (Exhibit #3).

2. A PAS-2000 completed by Kim Sang, R. N. from WVMI, on 12-1-04 determined the claimant to be eligible for Level of Care C which translated to four (4) hours per day or 124 hours per month (Exhibit #3).

3. The findings of the PAS-2000 dated 12-1-04 (Exhibit #3) were as follows: item #23 included Pain and Mental Disorder for a total of two (2) points, that item #24 showed no decubitus present for zero (0) points, that item #25 showed that the claimant was physically unable to vacate the building for two (2) points, that item #26 showed total feed assistance needed with eating (a) for two (2) points, total care assistance needed with bathing (b), dressing (c) and grooming (d) for two (2) points each, that there was incontinence of bladder (e) and bowel (f) for two (2) points each, that there was total disorientation (g) for two (2) points, that two-person assistance was needed for transferring (h) and walking (i) for two (2) points each, that no wheelchair was needed (j) for zero (0) points, that vision was not impaired for zero (0) points, that hearing (l) was not impaired for zero (0) points, that communication (m) was inappropriate for two (2) points, that there were no professional/technical needs (#27) for zero (0) points, that she is not capable of administering medications for one (1) point, 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 24 which qualified for Level C care or four (4) hours a day and 124 hours per month.

4. Ms. _____ testified that she misunderstood the question about wheelchair use, that the claimant does have a wheelchair which is not used in the daytime but is used in the evenings to move her from the couch to the bed, that it is used to transfer her from the couch to the bed, that she understood the question about swallowing and that they use a food processor and if they did not use precautions, the claimant would choke.

5. Ms. _____ testified that the claimant has difficulty swallowing as she has to be given small teaspoons, that it takes a long time for her to drink, that she agrees that the claimant has to use the wheelchair in transferring, that a hooyer lift is used in the mornings but a wheelchair is used in the evenings to take her to bed.

6. Ms. _____ testified that she has been in the home and witnessed the claimant having difficulty with swallowing and that she has two (2) wheelchairs for transferring.

7. Ms. Sang testified that she went over dysphagia with Ms. _____ and specifically asked about swallowing and that she asked Ms. _____ if the wheelchair was used in the home and Ms. _____ said it was not used.

8. PAS-2000 approved 12-1-04 (Exhibit #3) showed the following points: Item #23-2 points, item #24-0 points, item #25-1 point, item #26 a-2 points, b-2 points, c-2 points, d-2 points, e-2 points, f-2 points, g-2 points, h-2 points, i-2 points, j-0 points, k-0 points, l-0 points, m-2 points, #27-0 points, #28-1 point, #34-0 points, #35-0 points. Total points-24 for Level C.

Item 23 2 points
" 24 0 point
" 25 1 "
" 26 20 "
" 28 1 ".

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6. There were two (2) areas of dispute for which additional points could be awarded in the areas of wheelchair (Item #26 j) and dysphagia (item #23 f). The testimony showed that the claimant's sister who was interviewed (Ms. _____) misunderstood the question about the wheelchair and that a wheelchair is used in the home and that total assistance is needed with the wheelchair and an additional two (2) points are awarded for that item. However, in regard to dysphagia, Ms. _____ testified that she understood the question about dysphagia (swallowing) and that the claimant would choke if precautions were not taken such as using a food processor. While Ms. _____ and Ms. _____ testified that the claimant has difficulty swallowing, Ms. _____'s testimony showed that she did not misunderstand the question about swallowing and no additional deficit can be awarded for that item. The State Hearing Officer finds

that the claimant has a total of 26 points which translates to Level of Care D for four (5) hours per day or 155 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.

#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 reverse the action of the Department (WVMI) to determine Level of Care C which resulted in four (4) hours per day or 124 hours per month of homemaker hours in the Aged/Disabled Home and Community Based Waiver Services case. The claimant is eligible for Level of Care D for five (5) hours per day or 155 hours per month.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

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The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

