



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  
May 17, 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 May 12, 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  
Libby Goggess, BOSS  
Kim Sang, WVMI  
[REDACTED] SCAC  
[REDACTED], Panhandle Support Services

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 May 12, 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 May 12, 2005 on a timely appeal filed February 23, 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 Libby Boggess from the Bureau for Senior Services (BOSS), Kim Sang from WV Medical Institute (WVMI) and the claimant 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.
2. \_\_\_\_\_, Panhandle Support Services.
3. \_\_\_\_\_ SCAC.
4. Kim Sang, (WVMI) R.N.
5. Libby Boggess, (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**

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- Exhibit #1 Copy of regulations (7 pages).  
" #2 Copy of hearing request received 2-23-05.  
" #3 Copy of PAS-2000 reviewed 10-21-04 (4 pages).  
" #4 Copy of notice of decision 1-25-05.

### **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 10-21-04 (Exhibit #3).

2. A PAS-2000 completed by Kim Sang, R. N. from WVMI, on 10-21-04 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 #3).

3. The findings of the PAS-2000 dated 10-21-04 (Exhibit #3) were as follows: item #23 included Dyspnea, Pain, and other (MS) for a total of three (3) points, that item #24 showed no decubitus present for zero (0) points, that item #25 showed that the claimant was unable to physically vacate the building for one (1) point, 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 a colostomy (f) for one (1) point, that there was no disorientation (g) for zero (0) points, that two-person assistance was needed for transferring (h) for one (2) points, that two-person assistance was needed with walking (i) for two (2) points, that the claimant wheels independently (j) for zero (0) points, that vision was impaired but correctable for zero (0) points, that hearing (l) and communication (m) were not impaired for zero (0) 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 deteriorating 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.

4. The claimant stated that she had no disagreement with the findings of Ms. Sang.

5. Ms. [REDACTED] testified that the claimant is completely bedfast except for brief periods when she uses a hooyer lift to go wash her hair, that she has no voluntary movement in her lower legs which should get a point for paralysis, that she tries to eat herself but the homemaker has to feed her most of her meals, that she can wash her face but is total care in bathing, that she is total care in dressing and grooming, that the colostomy bag rips and she cannot even burp it and it should be marked as incontinent which would give her two (2) points for that item, and that ostomy was not checked under professional/technical needs.

6. Ms. Sang testified that ostomy was left off as a mistake but that it would not add any points, that she had some movement on the day of her visit and that is why paralysis was not marked, that she was told that she has to be fed less than 50% of the time, that bathing is not total care if the person can wash their face, that she could maneuver her arms for dressing, that she was told that the claimant could brush her hair, and colostomy was marked for bowel as she actually has a colostomy.

7. PAS-2000 approved 10-21-04 (Exhibit #3) showed the following points: Item #23-3 points, item #24-0 points, item #25-1 point, item #26 a-1 point, b-1 point, c-1 point, d-1 point, e-2 points, f-1 point, g-0 point, h-2 points, i-2 points, j-0 points, k-0 points, l-0 points, m-0 points, #27-0 points, #28-1 point, #34-0 points, #35-0 points. Total points-16 for Level B.

Item	23	3	points
"	24	0	point
"	25	1	"
"	26	11	"
"	28	1	"

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8. The areas of dispute for which additional points could be awarded included paralysis, eating, bathing, dressing, grooming, and colostomy for bowel. Since the claimant had no disagreements with the findings of Ms. Sang and Ms. Sang documented on item #38 that the claimant and the homemaker agreed with the findings on 10-21-04, the State Hearing Officer must rule that the findings of the PAS-2000 on 10-21-04 were correct and that 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. While Ms. [REDACTED] argued that some of the findings were understated, the fact that the claimant is able to assist herself with some eating, bathing, dressing, and grooming do not allow for additional points to be given on those items. In addition, it appears that the finding of colostomy was also correct as opposed to incontinence of the bowel. Therefore, the findings of

Ms. Sang on 10-21-04 are correct and the claimant is 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.

#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.