



**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

June 2, 2006

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 31, 2006. 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], Allied Nursing

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

____,

Claimant,

v.

Action Number: 06-BOR-1416

**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 May 31, 2006 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 May 31, 2006 on a timely appeal, filed March 15, 2006. It should be noted that the hearing was held by telephone conference 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. [REDACTED], Claimant's daughter and representative.
2. [REDACTED], Allied Nursing and Comm. Services.
3. Kay Ikerd, Bureau for Senior Services (BOSS) (testifying by speaker phone)
4. [REDACTED], WV Medical Institute (WVMI) R. N. (testifying 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:

Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of regulations (13 pages).
- D-2 Copy of hearing request received 3-15-06.
- D-3 Copy of PAS-2005 completed 2-21-06 (7 pages).
- D-4 Copy of notification letter 3-6-06.
- D-5 Copy of reevaluation request.

Claimant's Exhibits:

None.

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of Title XIX Aged/Disabled Waiver Services when a reevaluation request was received and a new PAS-2005 was completed by [REDACTED] of WVMI on 2-21-06 which determined a Level of Care B.
- 2) The claimant requested a hearing on 3-15-06, the State Hearing Officer received the hearing request on 5-1-06, and a hearing was convened on 5-31-06.
- 3) The findings of the PAS-2005 dated 2-21-06 resulted in 13 total points which resulted in Level of Care B for three (3) hours per day or 93 hours per month.
- 4) Ms. Ikerd testified about the regulations from the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual.

- 5) Ms. [REDACTED] presented her findings from the PAS-2005 completed on 2-21-06 (Exhibit #D-3).
- 6) Ms. [REDACTED] testified that her mother has a wheelchair now but was not sure if she had it when the assessment was done, that she came to live with her in April, 2006, that she cannot walk long distances, that she needs help with eating and dressing, that she falls when she tries to get up and needs assistance, that she uses a walker and a cane.
- 7) Ms. [REDACTED] testified that the claimant's condition has worsened since the PAS-2005 was completed and she needs more hours, not less.
- 8) Ms. Ikerd testified that the claimant reported to Ms. [REDACTED] that she gets around holding onto furniture and that her daughter reported that she had a motorized wheelchair but did not use it in the home.
- 9) The PAS-2005 completed on 2-21-06 showed the following points: item #23-3 points, item #24-0 points, item #25 a-1 point, b-1 point, c-1 point, d-1 point, e-0 points, f-1 point, g-1 point, h-1 point, i-1 point, j-0 points, l-0 points, m-0 points, item #26-0 points, #27-1 point, item #33-1 point, item #34-0 points, vacating the building 0-points. Total of 13 points for Level of Care B.
- 10). Policies and Procedures Manual Section 570.1,c states, in part

"LEVELS 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) Medical Condition

#24 - 1 point Decubitus

#25 - Level I - 0 points Functional levels

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

#26 - 1 point for continuous oxygen

#27 - 1 point for "No" answer-medical administration

#33 - 1 point if Alzheimer's or other dementia

#34 - 1 point if terminal."

Total number of points possible is 44."

- 11). Policies and Procedures Manual Section 570.1.d 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"

- 12) The areas of dispute with the findings of the PAS-2005 for which additional points could be awarded included walking, transferring, and wheelchair. In the area of walking, the State Hearing Officer finds that the claimant reported that she walks holding onto furniture and did not report that she needed one-person assistance. Therefore, an additional deficit cannot be awarded in the area of walking. In the area of transferring, the State Hearing Officer finds that the assessment showed that the claimant's daughter reported that she needs help getting to a standing position. Therefore, the State Hearing Officer finds that the claimant requires one-person assistance with transferring (Level III) and an additional point is awarded for transferring. In the area of wheeling, the State Hearing Officer finds that the assessment of Ms. [REDACTED] showed that a wheelchair was not used in the home as of the date of the assessment. Therefore, an additional point cannot be awarded in the area of wheeling. The State Hearing Officer finds that the claimant has a total of 14 points which translates to Level of Care B for three (3) hours per day or 93 hours per month.

VIII. CONCLUSIONS OF LAW:

Title XIX Aged/Disabled Waiver Policies and Procedures Manual 570.1.c provides the criteria for determining the points awarded for each functional activity of daily living and Section 570.1.d provides the service limits. The claimant qualified for 14 points which translates into Level of Care B and three (3) hours per day and 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 2nd Day of June, 2006.

Thomas M. Smith
State Hearing Officer