



**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

September 28, 2007



Dear [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 26, 2007. 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 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 C which amounts to four (4) hours per day or 124 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 C in the amount of four (4) hours per day or 124 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

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

██████████
Claimant,

v.

Action Number: 07-BOR-1823

**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 September 26, 2007 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 September 26, 2007 on a timely appeal, filed July 27, 2007.

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. ██████████ Claimant.
2. ██████████ Claimant's daughter.
3. ██████████ Claimant's son.

4. Kay Ikerd, R. N., Bureau of Senior Services (BOSS) (participating by speaker phone).
5. [REDACTED], R.N., WV Medical Institute (WVMI) (participating 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 C in the amount of four (4) hours per day or 124 hours per month.

V. APPLICABLE POLICY:

Chapter 500 of Title XIX Aged/Disabled Home and Community-Based Services Waiver, Policy and Procedures Manual, 11-3-03, Sections 503.2, 503.2.1, 503.2.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- #1 Copy of regulations (4 pages).
- #2 Copy of PAS-2000 7-23-07 (8 pages).
- #3 Copy of notification letter 7-24-07.
- #4 Copy of hearing request.

(It should be noted that some documents were provided which were not entered as evidence during the hearing and these documents were marked as "not admitted" for identification purposes only.)

Claimant's Exhibits:

- CI-1 Copy of letter from [REDACTED], M. D. dated 9-12-07 (originally objected to by Ms. Ikerd but objection withdrawn).

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of Title XIX Aged/Disabled Waiver Services Program when a reevaluation request was received and a new PAS-2000 was completed by [REDACTED] of WVMI on 7-23-07 which determined a Level of Care C.
- 2) The claimant was notified on 7-24-07 of the Level of Care determination (Exhibit #3) which resulted in a decrease in the number of homemaker hours from five (5) per day to four (4) per day and a hearing request was received by the Bureau for Medical Services on 7-27-07 and by the State Hearing Officer on 8-13-07.

- 3) The findings of the PAS-2000 dated 7-23-07 resulted in 25 total points which resulted in Level of Care C for four (4) hours per day or 124 hours per month.
- 4) The representative from BOSS provided testimony about the regulations from the Title XIX Aged/Disabled Home and Community Based Services Waiver Manual (Exhibit #1) and entered evidence listed in Section VI.
- 5) The R.N. from WVMi presented her findings from the PAS-2000 completed on 7-23-07 which resulted in 25 total points for Level of Care C (Exhibit #2).
- 6) The claimant's daughter testified that her mother requires two people to help her with showering but that she probably did not tell the WVMi R.N. on the day the PAS-2000 was completed, that her mother was previously a D level of care and has gotten worse, and that they are giving her more care now.
- 7) The claimant's son testified that it takes two (2) people to help his mother with showering, that one has to lift her legs while the other lifts her arms, and that she has gotten worse.
- 8) The R. N. from WVMi testified that since the claimant could assist with bathing that total care (Level 3) could not be awarded.
- 9) The only area of dispute with the findings of the PAS-2000 for which additional points could be awarded was in the area of bathing. The State Hearing Officer finds that no additional points can be awarded for bathing based on the information provided during the assessment on 7-23-07. The claimant's daughter reported that the claimant could wash her face and since she could provide some of her needs with bathing, she could not be considered as total care (Level 3) and the State Hearing Officer must agree that the claimant is properly awarded a Level 2 for bathing.
- 10). Title XIX Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2.1 and 503.2.2 (Exhibit #1): There will be four levels of care for clients of ADW homemaker services. Points will be determined based on the following sections of the PAS:
 - #23- Medical Conditions/Symptoms- 1 point for each (can have total of 12 points) (must be based on medical evidence presented by appropriate medical professionals)
 - #24- Decubitis- 1 point
 - #25- 1 point for b., c., or d.
 - #26 Functional abilities
 - Level 1- 0 points
 - Level 2- 1 point for each item a. through i.
 - Level 3- 2 points for each item a. through m.; i. (walking) must be equal to or greater than Level 3 before points are given for j. (wheeling)
 - Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.
 - #27 Professional and Technical Care Needs- 1 point for continuous oxygen
 - #28 Medication Administration- 1 point for b. or c.
 - #34- Dementia- 1 point if Alzheimer's or other dementia
 - #34- Prognosis- 1 point if terminal

The total number of points allowable is 44.

LEVELS OF CARE SERVICE LIMITS

Level A- 5 points to 9 points- 2 hours per day or 62 hours per month

Level B- 10 points to 17 points- 3 hours per day or 93 hours per month

Level C- 18 points to 25 points- 4 hours per day or 124 hours per month

Level D- 26 points to 44 points- 5 hours per day or 155 hours per month

VIII. CONCLUSIONS OF LAW:

- (1) Regulations in Title XIX Aged/Disabled Waiver Policies and Procedures Manual Section 503.2.1 states that the Level of Care is determined by the number of points the individual receives on the PAS assessment tool.
- (2) The claimant received a total of 25 points from the PAS-2000 completed on 7-23-07.
- (3) The evidence and testimony presented during the hearing resulted in no additional points awarded to the claimant.
- (4) The claimant's total number of points remains at 23 which results in Level of Care C for four (4) hours per day or 124 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 C for four (4) hours per day or 124 hours per month.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of September, 2007.

**Thomas M. Smith
State Hearing Officer**