



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

November 28, 2005

Mr. _____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 23, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce the homemakers hours due to a Level of Care determination.

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 for the Aged and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows: There are four levels of care for clients of ADW Homemaker services. Points will be determined based on specific sections of the PAS. (Aged/Disabled Home and Community Based Services Manual § 570.1.c & d. - Level of Care Criteria).

The information submitted at your hearing revealed: Your homemaker hours will be reduced from a "C to a "B Level of Care.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to determine your correct Level of Care.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Coordinating Council for Independent Living
Oretta Keeney, RN – West Virginia Medical Institute
Kay Ikerd, RN – Bureau of Senior Services

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

_____,
Claimant,

v.

Action Number: 05-BOR-6624

**West Virginia Department of
Health and Human Resources,**

Respondent,

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 28, 2005 for Mr. _____. 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 scheduled for November 23, 2005 on a timely appeal filed October 27, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was not held between the parties and, Mr. _____ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver 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 an intermediate or skilled nursing facility (if not for the waiver services). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

III. PARTICIPANTS:

_____, Claimant
_____, Homemaker – _____ Home Health Services
Kay Ikerd, RN – Bureau of Senior Services (BoSS)
Sue Bailey, RN – West Virginia Medical Institute (WVMI)
Angela Hall, RN – West Virginia Medical Institute (WVMI) - Observing

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Should Mr. _____'s Level of Care be reduced according to the Pre-Admission Screening (PAS) Form dated July 12, 2005?

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual § 580.2 *MEDICAL ELIGIBILITY REEVALUATION*; § 580.2.b *ANNUAL REEVALUATION*; § 570.1.c *LEVELS OF CARE CRITERIA* and; § 570.1.d *LEVELS OF CARE SERVICE LIMITS*

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual Policies
- D-2 Medicaid Program Instruction MA-04-61 dated 11/01/04
- D-3 PAS dated 07/12/05 with Attached Release of Information
- D-4 Notice of Decision dated 07/14/05
- D-5 Medical Necessity Reevaluation Request dated 06/15/05
- D-6 Scheduling Notice dated 07/19/05
- D-7 WVMI Appointment Notice dated 06/29/05
- D-8 Memorandum with Hearing Exhibits dated 10/21/05
- D-9 Request for Hearing dated 07/25/05
- D-10 GroupWise Messages re: Scheduling

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1) Aged/Disabled Home and Community Based Services Manual § 580.2 MEDICAL ELIGIBILITY REEVALUATION:

A medical eligibility reevaluation may include either a periodic or annual reevaluation. The purpose of either of these reevaluations is to confirm and validate an individual's continued medical eligibility for ADW services and to establish whether there is any change in the LOC the individual requires. The client and CMA will be notified of the decision of both periodic and annual reevaluations. The client will receive information describing due process rights should he/she dispute the medical eligibility determination.

2) Aged/Disabled Home and Community Based Services Manual § 580.2.b ANNUAL REEVALUATIONS:

In the event the field nurse determines that a periodic reevaluation is not necessary, the client will be scheduled for an annual reevaluation. All clients must be evaluated at least annually in order to confirm their medical eligibility for continued services and to establish the LOC they require. The reevaluation process is initiated by the CM agency completing and submitting a Medical Necessity Reevaluation Request (Attachment 18). The request can be submitted two months prior to the annual date. However, to avoid disruption of waiver services, it must be received by the QIO at least 15 days prior to expiration of the current approved period to allow processing time.

3) Aged/Disabled Home and Community Based Services Manual § 570.1.c 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)
- #24 1 point
- #25 1 point for B, C, or D
- #26 Levels 1 - 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 B or C
- #34 1 point if Alzheimer's or other dementia
- #35 1 point if terminal

**4) Aged/Disabled Home and Community Based Services Manual § 570.1.d
Levels of Care Service Limits:**

Level A	5-9 points	62 Hours Per Month
Level B	10-17 points	93 Hours Per Month
Level C	18-25 points	124 Hours Per Month
Level D	26-44 points	155 Hours Per Month

5) This issue involves a proposed reduction in homemaker hours due to a Level of Care Determination. The PAS dated July 12, 2005 indicates Mr. _____'s homemaker hours should be reduced from a Level "C" (124 hours per month) to a Level "B" (93 hours per month). Mr. _____'s Health Assessment listed a fractured back and neck; Incomplete spastic tetraplegia and; Hypertension. Those present during the assessment were Mr. _____, Claimant; Ms. [REDACTED] Homemaker and; Mrs. Sue Bailey, RN. Mr. _____ requested a fair hearing on July 25, 2005.

6) Ms. Kay Ikerd, RN reviewed the Level of Care policy. There were no questions for Ms. Ikerd.

7) Mrs. Sue Bailey, RN reviewed the Pre-Admission Screening (PAS) Form dated July 12, 2005 in the following manner:

Question #23 – (d) Significant Arthritis; (f) Dysphagia; (h) Pain; (k) Mental Disorder - Depression and; (l) Other (Hypertension) **Total Points = 5.**

Question #24 – Decubitus – No. **Total Points = 0.**

Question #25 – Vacating the building – Physically Unable. **Total Points =1.**

Question #26 – Functional Levels:

Eating – 2	1 Point	
Bathing – 2	1 Point	
Dressing – 2	1 Point	
Grooming – 2	1 Point	
Bladder – 3	2 Points	
Bowel – 1	0 Points	
Orientation – 1	0 Point	
Transferring – 2	1 Point	
Walking – 4	2 Point	
Wheeling – 2	0 Points	
Vision – 2	0 Points	
Hearing – 1	0 Points	
Communication – 1	0 Points	Total Points = 9

Question #27 – Professional and Technical Care Needs: No. **Total Points = 0**

Question #28 – Capable of administering own medications: B. With Prompting/Supervision. **Total Points = 1**

Question #34 – Alzheimer’s, Dementia or related condition: No. **Total Points = 0**

Question #35 – Prognosis: Stable. **Total Points = 0**

The total number of points from Mr. _____’s Pre-Admission Screening (PAS) Form = 16 points = Level “B” Care (93 hours per month). Mr. _____ is currently receiving Level “C” Care (124 hours per month).

- 8) It should be noted here that, the Case Management Agency, Coordinating Council for Independent Living (CCIL), did not attend the scheduled hearing.
- 9) Neither Mr. _____ nor Ms. [REDACTED] disputed the PAS assessed on July 12, 2005.

VIII. CONCLUSIONS OF LAW:

1) Aged/Disabled Home and Community Based Services Manual § 580.2 MEDICAL ELIGIBILITY REEVALUATION:

A medical eligibility reevaluation may include either a periodic or annual reevaluation. The purpose of either of these reevaluations is to confirm and validate an individual’s continued medical eligibility for ADW services and to establish whether there is any change in the LOC the individual requires. The client and CMA will be notified of the decision of both periodic and annual reevaluations. The client will receive information describing due process rights should he/she dispute the medical eligibility determination.

2) Aged/Disabled Home and Community Based Services Manual § 580.2.b ANNUAL REEVALUATIONS states in part,

In the event the field nurse determines that a periodic reevaluation is not necessary, the client will be scheduled for an annual reevaluation. All clients must be evaluated at least annually in order to confirm their medical eligibility for continued services and to establish the LOC they require.

3) Aged/Disabled Home and Community Based Services Manual § 570.1.d Levels of Care Service Limits:

Level A	5-9 points	62 Hours Per Month
Level B	10-17 points	93 Hours Per Month
Level C	18-25 points	124 Hours Per Month
Level D	26-44 points	155 Hours Per Month

4) Mr. _____'s Level of Care should be reduced according to the Pre-Admission Screening (PAS) Form assessed on July 12, 2005.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of November, 2005.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**