



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 1, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 19, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver 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.

The Aged /Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for a nursing facility level of care but have chosen the waiver program as a means to remain in their home. [Aged/Disabled (HCB) Services Manual 570-570.1b (11/1/03)].

The information which was submitted at your hearing revealed that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
WVMI  
BoSS  
CCIL

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

\_\_\_\_\_,

**Claimant,**

v. **Action Number:** \_\_\_\_\_

**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 July 1, 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 convened on April 19, 2005 on a timely appeal, filed January 24, 2005.

It should be noted here that the Claimant's benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid Title XIX Waiver (HCB) 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  
\_\_\_\_\_, Claimant's friend  
[REDACTED] CM, CCIL  
\_\_\_\_\_, Homemaker  
[REDACTED] BSN, RN, Homemaker RN  
Kay Ikerd, RN, BoSS (by phone)  
Debra LeMasters, RN, WVMI, (by phone)

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Claimant continues to be medically eligible for services under the Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual 560 & 570.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
- D-2 Medical Assessment, PAS-2000, 11/22/04
- D-3a Notice of Potential Denial from WVMI dated 12/7/04
- D-3b Notice of Termination/Denial dated 1/7/05
- D-4 Prescription for Pull-ups and chux dated 10/27/04.

**VII. FINDINGS OF FACT:**

- 1) On November 22, 2004, the Claimant's Aged & Disabled Waiver, hereinafter ADW, case underwent an annual medical reevaluation to verify continued medical eligibility.
- 2) Debbie LeMasters, RN, WVMI completed a medical assessment (exhibit D-2) and determined that the Claimant was no longer medically to participate in the ADW Program. On December 7, 2004, a notice of Potential Denial (exhibit D-3a), was sent to the Claimant requesting information regarding his medical condition that may not have been considered during the medical assessment. This notice indicates that the additional information be sent within 2 weeks.

- 3) A termination notice (exhibit D-3b) was sent to the Claimant on January 7, 2005. This notice includes some of the following pertinent information:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate / deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 3 areas – Vacate a Building, Bathing & Grooming.

- 4) Debra LeMasters reviewed the PAS-2000 (exhibit D-2) she completed on November 22, 2004 and testified that the Claimant demonstrates only three (3) program qualifying deficits – Vacating a building, Bathing and Grooming. Two additional documents were received and reviewed by WVMI after the Potential Denial letter was sent, exhibit D-4, prescription for Pull-ups and a letter from [REDACTED] however, Ms. LeMasters indicated that these documents did not identify any new deficits.
- 5) Representatives speaking on behalf of the Claimant contested the findings related to walking and incontinence. They contend that the Claimant's medical condition is deteriorating and he is becoming physically weaker. Walking is more difficult (relies on an assistive device) and his incontinence has become more frequent.
- 6) Exhibit D-4 includes a December 7, 2004 letter from [REDACTED] which states –Due to client's history of colon cancer, colostomy reversal, and slow gait, client's physician felt it was necessary to write client a prescription for pull-ups and chux on October 27, 2004. This evidence supports the existence of incontinence at a level that exceeds "occasional" prior to the medical assessment and an additional deficit is therefore established (+1).
- 7) The Claimant testified that he uses a four-prong cane while walking around in his home.
- 8) Aged/Disabled Home and Community Based Services Manual § 570 – Program Eligibility for Client:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the Program:

- C. Be approved as medically eligible for NF level of care.

9) Aged/Disabled Home and Community Based Services Manual § 570.1.a. - Purpose:

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
- B. Each applicant/client determined to be medically eligible for ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

10) Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. # 24: Decubitus - Stage 3 or 4
- B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
- C. #26: Functional abilities of individual in the home.
  - Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
  - Bathing ----- Level 2 or higher (physical assistance or more)
  - Grooming -----Level 2 or higher (physical assistance or more)
  - Dressing ----- Level 2 or higher (physical assistance or more)
  - Continence --- Level 3 or higher (must be incontinent)
  - Orientation---- Level 3 or higher (totally disoriented, comatose)
  - Transfer-----Level 3 or higher (one person or two person assist in the home)
  - Walking ----- Level 3 or higher (one person or two person assist in the home)
  - Wheeling ----- Level 3 or higher (must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home Do not count outside the home)
- D. #27: Individual has skilled needs in one or more of these areas – (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.
- E. #28: The individual is not (c) capable of administering his/her own medications.

**VIII. CONCLUSIONS OF LAW:**

- 1) A medical assessment was completed on the Claimant to determine continued medical eligibility for participation in the Aged/Disabled Waiver Program on November 22, 2004.
- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) of the specific categories of nursing services.
- 3) The evidence presented by WVM I as a result of their medical assessment reveals that the Claimant exhibits only three (3) program qualifying deficits.
- 4) An additional deficit (+1) is established by evidence presented in the form of testimony and documentation, particularly exhibit D-4, for incontinence of bowel. However, there is insufficient evidence support the establishment of a deficit in walking. In order for walking to be identified as a deficit, policy states that the individual must require level-3 or higher (one person assist in the home).
- 5) Whereas the Claimant exhibits only 4-deficits, continued medical eligibility for the Aged & Disabled Waiver Program cannot be established.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 1<sup>st</sup> Day of July, 2005.**

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**Thomas E. Arnett  
State Hearing Officer**