



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
227 Third St.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 13, 2005

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

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 11, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Aged/Disabled (HCB) Title XIX Waiver Services Program.

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 for the Aged/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who 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 where services can be provided. [Aged/Disabled (HCB) Services Manual Sections 570- 570.1b].

Information submitted at your hearing revealed that you continue to meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposed action of the Department to terminate your services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

**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 13, 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 July 11, 2005 on a timely appeal filed February 28, 2005.

It should be noted here that the Claimant's benefits have been continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The program entitled Aged/Disabled Waiver 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:**

\_\_\_\_\_, daughter of Claimant  
\_\_\_\_\_, RN, Mountain Cap  
\_\_\_\_\_, Case Manager, CWVAS  
Kay Ikerd, RN, BoSS  
Judy Bolen, RN, WVMI

Presiding at the hearing was Pamela L. Hinzman, 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 Agency was correct in its proposal to discontinue services under the Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Section 570

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 570
- D-2 Pre-Admission Screening (PAS) 2000 assessment completed on January 19, 2005
- D-3 Termination notice dated February 22, 2005
- D-4 Notice of Potential Denial dated February 7, 2005

**VII. FINDINGS OF FACT:**

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing an annual reevaluation to verify continued medical eligibility.
- 2) West Virginia Medical Institute completed a medical assessment (D-2) on January 19, 2005 and determined that the Claimant is no longer medically eligible to participate in the ADW Program.
- 3) The Claimant was notified of the potential denial (D-4) on February 7, 2005 and advised that she had two weeks to submit additional medical information.
- 4) On February 22, 2005, a termination notice (D-3) was sent to the Claimant.

- 5) Ms. Bolen reviewed the PAS 2000 (D-2) that she completed for the Claimant on January 19, 2005. She testified that her assessment of the Claimant revealed four (4) program qualifying deficits in the following areas of the PAS:

Question 26a- Eating  
Question 26c- Dressing  
Question 26d- Grooming  
Question 26e- Bladder incontinence

Ms. Bolen testified that the Claimant ambulated independently in the residence on the date of the assessment and did not hold onto furniture when she walked. She said the Claimant had indicated she gets in and out of the bathtub by herself and is able to wash herself. The Claimant was oriented on the date of the evaluation, but indicated she does become disoriented at times.

- 6) Mr. [REDACTED] and Ms. \_\_\_\_\_ contended that additional deficits should be awarded in the areas of bathing and inability to vacate in the event of an emergency. Ms. \_\_\_\_\_ testified that her mother often says things that she thinks others want to hear and does not always understand questions because she is hard of hearing. She testified that her mother is hyper, panics easily and suffers from social anxiety, and she does not believe her mother could vacate unassisted in the event of an emergency as a result of her mental capacity. Ms. \_\_\_\_\_ testified that she and the homemaker help her mother in and out of the bathtub and have been doing so for some time. She stated her mother would not take a bath if she was in the house by herself and she cannot remember to put soap on her washcloth.

- 7) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)- Program Eligibility for client:

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

- C. Be approved as medically eligible for NF Level of Care.

- 8) Aged/Disabled Home and Community-Based Services Manual Section 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 A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

9) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW 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 B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.

E. #28: The individual is not capable of administering his/her own medication.

## VIII. CONCLUSIONS OF LAW:

As a result of testimony presented during the hearing, one (1) additional deficit is awarded in the area of physical assistance in bathing. The Claimant's daughter testified that she and the homemaker have physically assisted the Claimant in and out of the bathtub for some time. Based on conflicting information presented during the hearing, the Claimant's mental ability to vacate in the event of an emergency is unclear. The Claimant, who had indicated to Ms. Bolen that she suffers from mild dementia, was oriented and was able to ambulate independently in the household on the date of the assessment. Ms. \_\_\_\_\_, however, contended that her mother has anxiety and would likely panic in the event of an emergency, rendering her unable to vacate the residence. The Claimant's ability to vacate cannot be determined.

The additional deficit in the area of bathing brings the Claimant's total number of deficits to five (5), the number required to meet Aged/Disabled Waiver Program eligibility guidelines.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's 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 13th Day of July, 2005.**

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**Pamela L. Hinzman  
State Hearing Officer**