



**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**

June 30, 2005

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 8, 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 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.

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]

The information submitted at your hearing reveals that your medical condition does not require 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 Agency's proposal to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

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

cc: Chairman, Board of Review  
WVMI  
BoSS  
CWVAS



**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 30, 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 convened on June 8, 2005 on a timely appeal filed March 28, 2005. The hearing was originally scheduled for May 11, 2005, but was rescheduled at the request of WVMI.

It should be noted here that benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending the results of the hearing.

All persons giving testimony were placed under oath.

**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:**

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

Kay Ikerd, RN, BoSS (participating telephonically)  
Sue Bailey, RN, WVMI (participating telephonically)

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question 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 PAS 2000 assessment completed February 7, 2005
- D-3 Termination notice dated March 1, 2005
- D-4 Notice of Potential Denial dated February 14, 2005

**VII. FINDING OF FACTS:**

1. The Claimant=s Aged & Disabled Waiver case, hereinafter ADW, was undergoing an annual medical reevaluation to verify continued medical eligibility.
2. West Virginia Medical Institute completed a medical assessment (D-2) on February 7, 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 on February 14, 2005 (D-4) and advised that she had two weeks to submit additional medical information.
4. On March 1, 2005, a termination notice (D-3) was sent to the Claimant.
5. Ms. Bailey reviewed the PAS 2000 (D-2) that she completed for the Claimant on February 7, 2005. She testified that her assessment of the Claimant revealed one (1) program qualifying deficit in the following area of the PAS:

Question 26e- Bladder Incontinence.

Ms. Bailey stated that the Claimant walked independently through the home and had no difficulty getting out of her chair on the date of the assessment. She testified that the Claimant indicated that her homemaker was only there to cook and clean for her and did not personally assist her. In addition, the Claimant told Ms. Bailey that she bathes, dresses and grooms herself.

6. Ms. \_\_\_\_\_ testified that bathing, dressing and grooming are listed as areas of assistance on the Claimant's Plan of Care. Ms. \_\_\_\_\_ testified that her son's girlfriend assists her with bathing, dressing and shampooing her hair and had been providing this care at the time the PAS was completed. In addition, she indicated that her son's girlfriend assists her in caring for her urostomy. Ms. \_\_\_\_\_ testified that she would need assistance to vacate in the event of an emergency due to problems stemming from a hernia. She indicated, however, that she would be able to walk out of the house with supervision. Ms. \_\_\_\_\_ stated that she did not remember to provide Ms. Bailey with this information on the date of the assessment and that she did not understand why Ms. Bailey was at her home. Ms. \_\_\_\_\_ testified that the Claimant has difficulty understanding information.

Ms. Bailey indicated that both she and her supervisor explained the purpose of their visit to the Claimant who was oriented and seemed to understand their questions. Ms. Ikerd stated that an agency can write a Plan of Care, but that it may not be compatible with a client's actual functionality in the home.

7. Aged/Disabled Home and Community-Based Services Manual ' 570 (D-1) - 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.

8. 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.

9. Aged/Disabled Home and Community-Based Services Manual ' 570.1.b. - *Medical Criteria*:

An individual must have five (5) 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 B (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:**

Testimony and evidence presented during the hearing fails to change the Claimant's medical ineligibility for the Aged/Disabled Waiver Program. Conflicting testimony was presented concerning the Claimant's ability to bathe, dress and groom. If additional deficits were awarded in these areas, the Claimant's total number of deficits would increase to four (4), but would continue to fall short of the number required for Aged/Disabled Waiver Program eligibility. The Claimant testified that she would be able to vacate her residence in the event of an emergency with supervision, which would not constitute a deficit.

Therefore, the Agency is correct in its proposal to terminate the Claimant's services under the Aged/Disabled Waiver Program.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** 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.

