



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 28, 2005

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 19, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue services under the Aged Disabled Waiver, A/DW, 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 A/DW 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 ' 570- 570.1b (11/1/03)].

The information which was submitted at your hearing revealed that at the time of the March 8, 2005 Pre-Admission Assessment, you did meet the eligibility criteria for the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to reverse the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
[REDACTED] CCIL - Boggess, BoSS - Keeney, WVMI



**III. PARTICIPANTS:**

Claimant's Witnesses:

\_\_\_\_\_, claimant

\_\_\_\_\_  
\_\_\_\_\_  
Coordinating Council for Independent Living (CCIL)  
Resident Manager of Unity House

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by speaker phone

Billy Jo Sides, Nurse WVMI

Presiding at the Hearing was Sharon K. Yoho, 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 their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual 570

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

**Departments' Exhibits:**

- D-1 Aged/Disabled Home and Community Based Services Manual 570, 570.1, 570.1.a,b,c
- D-2 Eligibility Determination, dated March 8, 2005
- D-3 Pre-Admission Screening, PAS, completed March 8, 2005
- D-4 Notice of proposed closure, dated April 19, 2005
- D-5 Notice of Potential Denial, dated March 21, 2005

**Claimants' Exhibits:**

- C-1 Letter from \_\_\_\_\_ dated April 4, 2005
- C-2 Letter from \_\_\_\_\_ dated March 31, 2005
- C-3 Pre-Admission Screening completed by a nurse at CCIL on February 25, 2005

**VII. FINDINGS OF FACT:**

- 1) Claimant is a 68-year-old male who has primary diagnosis of Stroke, Spastic Pralylis, Hypertension, Skin Breakdown and Lyme disease.
- 2) Mr. \_\_\_\_\_'s A/DW eligibility was undergoing an annual evaluation on March 8, 2005. A Pre-Admission Screening (PAS) was completed in the home with only the evaluating

nurse, Billy Jo Sides, and the claimant present. This evaluation assigned two (2) deficits in the areas of eating and walking.

- 3) Ms. Sides testified that completing the Pre-Admission Screening evaluation was a very difficult task due to the non-cooperation from the claimant on that day. Ms. Sides notes on the PAS that Mr. \_\_\_\_\_, "is very difficult to understand due to slurred speech." Her overall comments indicated that, "his communication is understandable w/careful listening and repetition of his responses."
- 4) Mr. \_\_\_\_\_ demonstrated somewhat of a negative attitude during the hearing, but did voice his concerns for how he will function without help. His speech during the hearing was almost impossible to understand. Ms. [REDACTED] was able to understand what he was saying and repeated his testimony for the record.
- 5) The areas in question raised at this hearing through testimony and evidence were in the areas of grooming, vacating, bladder incontinence, transferring, and decubitis.
- 6) Mr. \_\_\_\_\_ stated during the hearing that he is unable to clip his own toenails. His response to the Nurse during the PAS regarding clipping toenails was reported to be a statement of "I don't worry about clipping my toenails." The claimant lacks in fine motor skills and does have problems with tasks which require the use of his hands.
- 7) The claimant lives in an apartment on the first floor. When vacating the building, he relies on an automatic door to exit. In the event of an emergency where there was a power outage, Mr. \_\_\_\_\_ could not vacate without the assistance of others.
- 8) Ms. [REDACTED] has found evidence that Mr. \_\_\_\_\_ has not been able to get to the bathroom to relieve his bladder. Urine has been found in the trashcan in his bedroom.
- 9) Mr. \_\_\_\_\_ is reported to have fallen while attempting to transfer. His falls are reported to be more frequent as of late. He refused to show the evaluating nurse his method of transferring.
- 10) Mr. \_\_\_\_\_ admitted to a nurse from CCIL that he had a red place on his left buttock that he is medicating. He refused to let this nurse see the area. He reported to her that it was not an open area. Mr. \_\_\_\_\_ spends most of his waking day in his wheelchair and he has a diagnosis of skin breakdown.
- 11) Aged/Disabled Home and Community Based Services Manual § 570 – Program Eligibility for Client:

Applicants for the A/DW Program must meet all of the following criteria to be eligible for the Program:

- A. Be 18 years of age or older
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.

- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
  - E. Choose to participate in the A/DW Program as an alternative to NF 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 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# 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:**

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) deficits in order to qualify medically for the A/DW program benefits. Evidence and testimony provided at this hearing supports that if this claimant had been more cooperative with the evaluating nurse during the PAS assessment he would have been assessed as having five (5) deficits.
- 2) The PAS completed on March 8, 2005 assigned two (2) deficits in item C. #26, of Chapter 570.1.b in the areas of eating, and walking. Testimony and evidence presented at this hearing supports that the claimant should have been assessed as having two (2) additional deficits in item C. #26 in the areas of grooming and transferring. The claimant cannot trim his own toenails. The reported falls and failure to accomplish transfer to the bathroom to urinate supports that the claimant needs physical assistance for transfer. Testimony and evidence also conclude that an additional deficit for the inability to vacate in the event of an emergency should have been assigned due to his exiting the building without the help of others depends on electrically powered doors. The issues of bladder incontinence and decubitus could not fully be determined by the testimony and evidence of this hearing and without the complete cooperation from this Aged Disabled Waiver client, these issues may remain unconfirmed.

## **IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the claimant should have been assessed with five (5) qualifying deficits and that any future PAS evaluations should include the input of a employee from the claimant's case management agency and or other persons with whom he is comfortable. I am ruling to **reverse** the Agency's actions to discontinue the benefits and services under the Aged/Disable 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 28th Day of July, 2005.**

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**Sharon K. Yoho  
State Hearing Officer**