



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 25, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 14, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to deny 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 do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your benefits 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
BoSS
WVMI
Select In-Home Services

**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 25, 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 14, 2005 on a timely appeal filed May 25, 2005.

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:

, Claimant

Jane Meadows, RN, WVMI
Kay Ikerd, RN, BoSS (participating telephonically)

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 action to deny 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 April 20, 2005
- D-3 Notice of Potential Denial dated April 26, 2005
- D-4 Notice of Denial dated May 12, 2005

Claimant's Exhibits

- C-1 Letter from Dr. [REDACTED] dated May 16, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing an evaluation to determine initial medical eligibility.
- 2) West Virginia Medical Institute completed a medical assessment (D-2) on April 20, 2005 and determined that the Claimant is not medically eligible to participate in the ADW Program.
- 3) The Claimant was notified of the potential denial (D-3) on April 26, 2005 and advised that he had two weeks to submit additional medical information. The Claimant submitted a letter from Dr. [REDACTED] (C-1) which was not considered by WVMI since it was received outside of the two-week time frame to submit additional information.

- 4) On May 12, 2005, a denial notice (D-4) was sent to the Claimant.
- 5) Ms. Meadows reviewed the PAS 2000 (D-2) that she completed for the Claimant on April 20, 2005. She testified that her assessment of the Claimant revealed two (2) program qualifying deficits in the following areas of the PAS:

Question 26b- Bathing

Question 26c- Dressing

Ms. Meadows testified that the Claimant was hospitalized on the date of the assessment and she completed the PAS in his room at ██████████ Memorial Hospital. He had been admitted to the hospital on April 18, 2005 due to an episode of syncope.

- 6) Ms. ██████████ referred to the correspondence from Dr. ██████████ (C-1) and indicated that the letter was submitted late because Dr. ██████████ had been out of the country on vacation. The Claimant had heart catheterization surgery and insertion of a pacemaker around April 21 or April 22, 2005. The letter from Dr. ██████████ indicates that, as a result of the Claimant's weakened condition following surgery, the Claimant requires assistance with bathing, dressing and grooming. In addition, the letter stated the Claimant requires a one-person assist with ambulation and transferring, and requires reminders to administer medications. The letter indicated the Claimant would be physically unable to vacate a building in the event of an emergency and has urinary incontinence more than four times per week.

The Claimant testified that his condition has worsened since the date of the assessment.

Ms. Meadows indicated that the Claimant ambulated and transferred independently on the date of the assessment, and indicated he could groom independently as well. He voided in a urinal without assistance and denied incontinence of bowel or bladder, however, his homemaker had indicated he sometimes has accidents. He was rated as occasionally incontinent in both of these areas. The Claimant had indicated he may require supervision in vacating in the event of an emergency. Ms. Ikerd stated that if the Claimant had informed the Department of his operation, the information could have been included in the assessment, however, undergoing the procedure may not have changed the Claimant's functionality. In addition, Ms. Ikerd noted that insertion of a pacemaker normally improves an individual's level of functioning.

- 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, zero (0) additional deficits are awarded to the Claimant. The letter from Dr. [REDACTED] describes the Claimant's condition following heart catheterization surgery and does not address the Claimant's functionality on the date of the assessment. Ms. Meadows testified that the Claimant was able to ambulate/transfer independently on the date of the assessment and the Claimant indicated he was able to groom without assistance. Since the Claimant ambulated and transferred independently, it was determined that he could vacate with supervision in the event of an emergency. It was noted during the assessment that the Claimant sometimes has incontinence and he was rated as occasionally incontinent on the PAS. There is no indication of when the Claimant became incontinent more than four times per week as reflected in Dr. [REDACTED] letter.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny 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 25th Day of July, 2005.

**Pamela L. Hinzman
State Hearing Officer**