



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 6165  
Wheeling, WV 26003

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 20, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 11, 2006. 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 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 November 21, 2005 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

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

Sincerely,

Melissa Hastings  
State Hearing Officer  
Member, State Board of Review

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

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

\_\_\_\_\_ **Claimant,**

v.

**Action Number: 06-BOR-1013**

**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 11, 2006 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, 2006 on a timely appeal filed February 3, 2006.

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:**

Claimant's Witnesses:

- \_\_\_\_\_ - claimant
- \_\_\_\_\_ – Homemaker Panhandle Support and claimant's niece
- \_\_\_\_\_ – Case Manager CCIL
- \_\_\_\_\_ – Homemaker RN Panhandle Support
- \_\_\_\_\_ – Claimant's sister

Department's Witnesses:

- Brian Holstein-Bureau of Senior Services by phone
- \_\_\_\_\_ - WVMI nurse by phone

Presiding at the Hearing was Melissa Hastings, 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 Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Service **Manual §570**

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community based Services Manual §570, 570.1 a,b.
- D-2 Pre-Admission Screening, PAS, completed November 21, 2005
- D-3 Notice of potential denial dated December 9, 2005
- D-4 Notice of termination dated January 4, 2005
- D-5 Letter from \_\_\_\_\_, Psychologist with Behavioral Health Management Inc dated December 15, 2005
- D-6 Letter from \_\_\_\_\_, DO dated December 22, 2005

**Claimant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) Ms. \_\_\_\_\_ is a 44 year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on November 21, 2005.

- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant, homemaker, homemaker RN and case manager participating. The evaluating nurse determined that the claimant had only one (1) qualifying deficit. She assigned a deficit for Ms. \_\_\_\_\_'s need for physical assistance in bathing.
- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was Reflux Sympathetic Dystrophy.
- 4) Claimant and her representative, Case Manager \_\_\_\_\_, contend that Ms. \_\_\_\_\_ should have been awarded deficits for her inability to vacate the building, dressing, orientation, grooming, continence and medication administration...
- 5) The Pre-Admission Screening form page 2 of 5 section 25c (D2) indicates that claimant was assessed as a level 1 Self/Prompting in the area of dressing. Evaluating nurse made this assessment based on claimant's demonstrated ability to raise her left arm over her head without difficulty and could raise her right arm until she could touch her head. Nurse also noted that claimant had good range of motion of both legs and could raise legs to reach her feet. When claimant indicated that homemaker fastens her bra for her evaluating nurse made judgment that claimant could fasten bra in front and then move the fastener around to the back herself.
- 6) Testimony received from both the claimant and the homemaker during the hearing indicates that homemaker has to fasten the claimant's bra because claimant cannot turn the bra around if the fastener is in front. Homemaker's testimony also indicates that claimant loses her balance easily when trying to dress herself so homemaker regularly assists claimant with putting on tops and pants.
- 7) The Pre-Admission Screening form page 2 of 5 section 25d (D2) indicates that the claimant was assessed as a level 1 Self/Prompting in the area of grooming. While in the home the evaluating nurse indicates claimant acknowledges doing her own mouth care and combing her own hair. Claimant indicated a need for someone to assist her with washing her hair but nurse's evaluation was that claimant could reach her head with both arms and would be able to wash her own hair. Claimant indicated that she had no need for nail care as her nails did not grow. Evaluating nurse found that claimant possessed the ability if she needed to handle her own nail care.
- 8) Testimony received from the homemaker during the hearing confirms that she washes and blow dries claimant's hair. Also indicates that she cares for claimant's nails because claimant's shakes too much to care for nails herself.
- 9) The Pre-Admission Screening form page 2 of 5 section 25e and f (D2) indicates that the claimant was assessed as a level 2 Less than Total Incontinence in the bladder and bowel. While in the home the evaluating nurse indicates claimant acknowledged some incontinence of urine and bowel. Indicates she wears pads and changes them twice a day.

- 10) Testimony from the homemaker received during the hearing confirms claimant's use of pads but homemaker states that claimant doesn't even know she is wet. Claimant's testimony indicates that her husband assists her in getting to the bathroom during the night.
- 11) The Pre-Admission Screening form page 2 of 5 section 25g (D2) indicates that the claimant was assessed as a level 1 Oriented in the area of Orientation. The evaluating nurse found the claimant to be alert and oriented times 3 during the evaluation. Short term memory problems were noted.
- 12) Testimony received from the homemaker and the homemaker RN during the hearing indicates that claimant does have problems with impaired judgment and short term memory. Has had problems related to her medication because she cannot remember whether she has taken the medications and has overdosed as a result. [REDACTED] RN testified that claimant's medications are now locked up to avoid an overdose. A letter from [REDACTED], psychologist with Behavioral Health Management, Inc, (D5) indicates the following:

It is, indeed, possible when you conducted your evaluation of Mrs. \_\_\_\_\_ that she may have, fortunately, had a period of rather effective functioning in which many of her activities of daily living were not impaired. However, this patient has a well-documented history of psychotic decompensation, including significant delusional thought.

- 13) The Pre-Admission Screening form page 2 of 5 section 27 indicates that claimant is capable of administering her own medications. The evaluating nurse made this assessment based on the claimant's statement that she takes the medications out of her prescription bottles herself and places them in her mouth. Claimant did acknowledge some problems putting a pain patch on her arm but evaluating nurse felt claimant was capable of placing the patch on herself.
- 14) Testimony received from the homemaker during the hearing indicates that claimant does put on the pain patch herself and that homemaker puts additional tape on the patch to secure it. The patch must be changed every three days so the homemaker writes the date on the tape to keep track of the medication administration. Testimony received from the homemaker during the hearing also indicates that claimant does attempt to take her own medications but tremors in her hand cause the pills to drop and homemaker must then place the medication into the claimant's hand and watch her take them to be sure all of the medications are taken.
- 15) 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.

16) 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.

17) 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)
- B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).
  - 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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
  - 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 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. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

### **VIII. CONCLUSIONS OF LAW:**

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMI nurse assigned the claimant one (1) qualifying deficit in the area of bathing.
- 2) The issues raised at the hearing were in the areas of Dressing, Grooming, Continence, Orientation, Medication Administration and Ability to Vacate a Building.
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on November 21, 2005.
- 4) Evidence and testimony admitted during this hearing reveal that in the contested area of Dressing the claimant does meet the level 2 definition requiring Physical Assistance and should be awarded a deficit.
- 5) Evidence and testimony admitted during this hearing reveal that in the contested area of Grooming the claimant does meet the level 2 definition requiring Physical Assistance and should be awarded a deficit.
- 6) Evidence and testimony admitted during this hearing confirm that the Level 2 Less than Total Incontinence in the contested area of continence was appropriately assigned by the evaluating nurse. Total incontinence is required to receive a deficit in this area and claimant acknowledged that she had "some incontinence" and that husband assisted her in walking to the bathroom at night.
- 7) Evidence and testimony admitted during this hearing confirm that claimant's condition warrants a Level 2 Intermittent Disoriented in the contested area of Orientation rather than the Level 1 Oriented assigned by the evaluating nurse. To receive a deficit in the area of Orientation an individual must be totally disoriented, comatose. Claimant does have some memory and disorientation problems but her psychologist letter indicates

there are days when claimant functions effectively in her home. Her condition does not rise to the level of total disorientation or comatose required for a deficit.

- 8) The Ability to vacate a building category was appropriately determined based on policy requiring a level 3 assessment in walking and/or a level 3 assessment in orientation. Orientation was the only item contested by the claimant in this category. As noted in item 7 above, a Level 2 Intermittent Disorientation was the level of care determined in this case.
- 9) Evidence and testimony received during this hearing reveal in the area of Medication Administration that claimant does have difficulty administering her own medications at times due to tremors in her hand. Homemaker has to place medication into claimant's hand and watch her take the medication. Policy requires that medication must be placed in recipient's hands at **all times** to receive a deficit; therefore a deficit cannot be assigned.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, a determination has been made that claimant meets the criteria for three (3) deficits in the areas of Bathing, Dressing and Grooming. Policy requires five (5) deficits to be eligible for the Aged/Disabled Waiver Program therefore it is the decision of the Hearings Officer to **UPHOLD** the agency's proposed action to terminate services.

**X. The RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 20th Day of July 2006.**

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**Melissa Hastings  
State Hearing Officer**