



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III  
Governor

Office of Inspector General  
Board of Review  
PO Box 29  
Grafton WV 26354  
August 28, 2006

Martha Yeager Walker  
Secretary

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

Attached is a copy of the findings of fact and conclusions of law on your hearing convened May 11, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue your benefits/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.

Medicaid, Aged/Disabled (HCB) Title XIX Waiver is granted to those individuals who continue to meet all eligibility requirements. 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. In order to medically qualify for Aged/Disabled Waiver services an individual must have a total of five (5) qualifying deficits in specific categories of nursing services. [Aged/Disabled (HCB) Services Manual §570- 570.1b].

The information submitted at your hearing established that while your condition has not improved, because of eligibility criteria implemented by the agency November 1, 2005, you no longer qualify medically for participation in the waiver program. Evidence fails to establish 5 qualifying deficits based on the agency's most recent policy.

Based on evidence presented and current policy, the State Hearing Examiner must **uphold** the proposal of the agency to discontinue your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the January 30, 2006 notification

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Libby Boggess, BoSS  
[REDACTED], WVMI  
[REDACTED], Coordinating Council for Independent Living

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

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

v.

**Action Number 06-BOR- 1064**

**West Virginia Department of Health and Human Resources,  
Respondent.**

**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 August 28, 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 May 11, 2006 on a timely appeal requested February 3, 2006.

**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:

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

\_\_\_\_\_, Homemaker aide

\_\_\_\_\_, CM, CCIL

\_\_\_\_\_, RN, CCIL

Linda Wright, RN, Bureau of Senior Services (by phone)

\_\_\_\_\_, RN, West Virginia Medical Institute (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner 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 §570- 570.1

### VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1- A/D Waiver Manual §560- 570.c

E-2- WVMI Independent Review (PAS), 12/22/05

E-3- Notification 12/29/05 (Potential Denial)

E-4- Notification, 1/30/06 (Termination)

E-5- Additional information submitted by Dr \_\_\_\_\_ and received by BoSS 1/13/05

C-1- Statements from Dr \_\_\_\_\_, 5/16 and 5/17/06- received by examiner 5/18/06

### VII. FINDINGS OF FACT:

1) The claimant's A/D Waiver case was due for an annual review and a WVMI Independent Review (E-2) was completed by the WVMI on December 22, 2005.

2) WVMI determined that the claimant was no longer medically eligible for Waiver services and a notification of potential closure was mailed by the agency December 29, 2005.

3) The agency mailed a notification of termination to the claimant January 30, 2006.

4) A hearing request dated February 2, 2006 was received by the Bureau for Medical Services (BMS) February 3, 2006 and by this examiner March 6, 2006. A hearing was convened May 11, 2006

5) During the hearing, exhibits as noted in Section VI above were accepted. A 10 day period was granted to allow for submittal of a medical statement concerning abdominal sores. C-1 received May 18, 2006 and FAX to BoSS.

6) Testimony was heard from the parties listed in section III above. All persons giving testimony were placed under oath.

7) On the basis of the medical evaluation completed December 22, 2005 and testimony of the WVM RN who completed the assessment, 3 qualifying deficits were acknowledged- bathing, grooming, and dressing.

8) E-5, statement of 1/12/06 from Dr. [REDACTED] states in part: "The patient has at this time two other small ulcerations on her ® leg and back of her buttocks. I cannot believe that the visiting nurse did not note that the patient needs help with transferring and walking. She has help come in from various friends throughout most of the day. They help her get out of the chair at times and pushing her along."

9) C-1 Statement of 5/17/06 from Dr. [REDACTED] states in part: "She has two large open wounds in her abdomen located in the cleft of her pannus. They are worse than any Decubitus ulcers I have seen."

8) Sworn testimony by and on behalf of the claimant reveals that the homemaker or a friend must help her out of bed each morning. Her legs must be lifted in and out of bed. She also requires assistance in getting out of a chair and transferring onto and off the toilet. The homemaker sometimes steadies her with walking.

9) The Aged/Disabled Home and Community Based Services Manual § 580.2.b states in part: All clients must be evaluated at least annually in order to confirm their medical eligibility for continued services and to establish the LOC (level of Care) they require.

10) The Aged/Disabled Home and Community Based Services Manual § 570 reveals that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care.

11) The 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 ADW Program. These deficits are derived from a combination of assessment elements on the medical evaluation- Decubitus - Stage 3 or 4; ability to vacate a building\*; functional abilities of individual in the home – eating (*physical assistance to get nourishment, not preparation*) bathing, grooming, dressing (all Level 2 or higher - *physical assistance or more*),

continence\* (Level 3 or more- must be total incontinent; orientation, transferring, walking, wheeling\* (all Level 3 or higher- personal assistance); skilled needs; ability to self-medicate\*.

\* Vacating 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, Alzheimer's, or related conditions

\* Incontinence- defined as when the recipient has no control of bowel or bladder functions at any time

\* Wheeling- 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.

\* Ability to self medicate-A person is incapable of self medicating 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) Policy relating to the Aged/Disabled Home and Community Based Services program directs that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care. Continuing eligibility is determined based on an assessment of the individual's functional ability in a number of designated elements pertaining to the activities of daily living. Evidence reveals that such an evaluation was completed by the West Virginia Medical Institute on December 22, 2005. This evaluation found 3 qualifying deficits in the categories of bathing, dressing and grooming.

2) Deficits are derived from a combination of the aforementioned assessment elements (VII #12). The following additional deficits were alleged during the hearing.

3) In order to determine a qualifying deficit in the category of *walking* it must be shown that the recipient requires physical assistance (at least 1 person) to walk. While testimony indicates occasions during which the homemaker might "guide" the claimant while walking, the WVMi evaluation notes that the claimant walked in the home with an assistive device- a cane. The use of a wheelchair was not documented. Evidence **fails** to convincingly establish a qualifying deficit in **Walking**.

4) In order to determine a qualifying deficit in the category of *transferring* it must be shown that the recipient requires physical assistance (at least 1 person) to transfer. Testimony while conflicting with the WVMi assessment indicates the claimant requires assistance in getting out of bed each day – either the homemaker or a friend. Evidence establishes a qualifying deficit in **Transferring**.

5) In order to determine a qualifying deficit in the category of *decubitus* it must be established that the recipient suffers a Stage 3 or 4 decubitus ulcer. While medical documentation indicates severe ulcerous sores there is no definitive evidence offered that such wounds can be characterized as Decubitus. Evidence **fails** to convincingly establish a qualifying deficit in **Decubitus**.

6) Policy provides that an individual must have a minimum of five deficits to qualify medically for the ADW Program. The agency credited the claimant with 3 deficits – dressing, bathing and grooming. Evidence offered during the hearing established only 1 additional qualifying deficit- transferring for a total of 4. The 5 deficit threshold was not met.

**IX. DECISION:**

The agency's determination as set forth in the January 30, 2006 notification is **upheld**. Under current policy the claimant is not medically eligible for the waiver program.

**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 28<sup>th</sup> Day of August 2006**

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**Ron Anglin**  
**State Hearing Examiner**

**CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION**  
**For**  
**Public Assistance Hearings,**  
**Administrative Disqualification Hearings, and**  
**Child Support Enforcement Hearings**

**A. CIRCUIT COURT**

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

**B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of health and Human Services, Washington, D.C. 20201.

**C. THE UNITED STATE DEPARTMENT OF AGRICULTURE**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.