



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

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

June 15, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 7, 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 December 19, 2005 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under 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  
Bogges, BoSS - Keeney, WVMI

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

\_\_\_\_,

**Claimant,**

v.

**Action Number: 06-BOR-1222**

**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 June 7, 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 June 15, 2006 on a timely appeal, filed January 31, 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

\_\_\_\_, claimant's father

\_\_\_\_, claimant's mother

\_\_\_\_, SW, Selective Home Services

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone

\_\_\_\_, WVMI nurse by phone

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 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 December 19, 2005

D-3 Eligibility Determination dated December 19, 2005

D-4 Notice of potential denial dated December 28, 2005

D-5 Notice of termination dated January 16, 2006

**Claimant's Exhibits:**

C-1 Letter from \_\_\_\_ to Dr. \_\_\_\_ and reply

C-2 Request for hearing

**VII. FINDINGS OF FACT:**

- 1) Ms. \_\_\_\_ is a 35-year-old female with primary diagnosis of cerebral palsy. She has applied for services under the Aged Disabled Waiver, (AD/W) program.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant and her homemaker, \_\_\_\_\_. The evaluating nurse determined that the claimant had only four (4) qualifying deficits. She

assigned a deficit for Ms. \_\_\_\_'s need for physical assistance in bathing, grooming, walking and vacating.

- 3) The claimant and her witnesses raised the issue of dressing and transferring.
- 4) The claimant stated to the nurse during the PAS that she has trouble with pants and that she wears slippers or Velcro slippers. She told the nurse that her homemaker assists her with dressing if she is present. She advised the nurse that her parents will assist her if it is needed.
- 5) Ms. \_\_\_\_ testified that when someone is around she wears regular shoes. Her mother, Ms. \_\_\_\_, states that \_\_\_\_ was never able to put on her own shoes and socks and she cannot get her pants up over her buttocks on her own.
- 6) The claimant can complete transfers on her own, but does need a spotter to transfer safely. She has had some falls. She has been trained on methods to use to fall without injury. Ms. \_\_\_\_ told the nurse, at the assessment, that she did not require hands on assistance, but does use devices. The nurse scored transferring at a level two (2) indicating the need for supervision and assistive device.
- 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. 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 four (4) qualifying deficits in the areas of bathing, grooming, walking and vacating.
- 2) The issues raised at the hearing were in the area of dressing and transferring. Ms. \_\_\_\_\_ does require hands on assistance to complete dressing. She needs help with her pants

and she cannot put on socks or most shoes on her own. Evidence and testimony did not conclude that Ms. \_\_\_\_ needs hands on assistance to transfer.

- 3) The evaluating nurse should have assigned a deficit for dressing which would make five (5) deficits. Policy stipulates that five (5) deficits are required for medical eligibility.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse should have assessed the claimant with five (5) deficits including one (1) for dressing. With the authority granted to me by the WV State Board of Review, I am ruling to **reverse** the Department's proposed action to discontinue this claimant's services under the Aged/Disabled Title XIX (HCB) Waiver program and that the Department assesses the additional points for level of care associated with dressing.

**IX. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 15th Day of June 2006.**

---

**Sharon K. Yoho**  
**State Hearing Officer**