



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
150 Maplewood Ave.  
Lewisburg, WV 24901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 1, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 9, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny benefits and services received through 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.

The Aged /Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to 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. [Aged/Disabled (HCB) Services Manual 570-570.1b (11/1/03)].

The information which was submitted at your hearing reveals that your medical condition does not require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Margaret M. Mann  
State Hearing Officer  
Member, State Board of Review

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

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

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

v.

**Action Number: 06-BOR-1532**

**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 August 9, 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 August 9, 2006 on a timely appeal filed March 28, 2006.

It should be noted here that the claimant's benefits have been denied.

**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:**

It should be noted that this hearing was held by conference call.

\_\_\_\_\_, Claimant  
\_\_\_\_\_, RN, WVMI  
Brian Holstine, LSW, BoSS

Presiding at the Hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the claimant is medically eligible for benefits and services provided through the Medicaid, Aged/Disabled Waiver (HCB) Program.

### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual 570.

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

#### **Department's Exhibits:**

- D-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
- D-2 Medical Assessment, PAS-2005, completed on January 23, 2006
- D-3 Notice of Potential Denial from WVMI dated 02/09/06
- D-4 Notice of Termination/Denial Notice dated 02/27/06

### **VII. FINDINGS OF FACT:**

- 1) On January 23, 2006 the claimant was evaluated (medically assessed) to verify medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW, and to confirm the appropriate Level of Care. The claimant was the only person present for the assessment.
- 2) The medical assessment (D-2) completed by WVMI determined that the claimant was not medically eligible to participate in the ADW Program.
- 3) On February 9, 2006, a notice of Potential Denial (D-3), was sent to the claimant. This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations. Based on your PAS you have deficiencies in only 1 area. The area in which a deficiency was found - Grooming.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

The claimant was notified that he could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final decision was made. No additional documentation was received.

- 4) A denial notice (D-4) was sent to the claimant on February 9, 2006. This notice includes some of the following pertinent information:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate / deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 1 area. The area noted – Grooming.

- 5) The claimant was 64 years of age at the time of the assessment. His primary diagnoses are insulin dependent diabetes, hyperlipidemia, blindness left eye, and extremely poor vision.
- 6) The claimant disagrees with the findings for bladder/bowel continence, walking, orientation and medication administration. Testimony from the claimant revealed he sometimes can make it to the bathroom, sometimes he can't. Someone puts his medication in a box and he is able to administer his own medication from the box. He cannot walk on the ground. He does pretty good in the house. He uses a cane in the house if needed. He has problems with orientation at night such as going from the bedroom to the bathroom.
- 7) Testimony from Ms. [REDACTED] revealed that the claimant reported at the time of the assessment he was continent. One has to be totally incontinent in order to receive a point for incontinence. The claimant was ambulatory at the time of the assessment. The use of a cane would not qualify for an additional point. The claimant was oriented to time and place. He was assessed as being able to administer his own medications.
- 8) Documentation on the PAS-2005 reads in part: “ When nurse arrives, client is standing on the front porch of his home. Mr. \_\_\_\_\_ ambulates independently as he enters the living room and is seated in a chair.....Client is observed getting up from his chair as he supports himself on the chair arms..... Mr. \_\_\_\_\_ tells nurse a neighbor draws his insulin into the syringes for him. Reports he is then able to administer the injections himself....Mr. \_\_\_\_\_ admits he is continent of bowel and bladder habits.

Nurse finds

that client is oriented to time and place today.”

- 9) Aged/Disabled Home and Community Based Services Manual § 570 – Program Eligibility for Client:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the Program:

C. Be approved as medically eligible for NF level of care.

- 10) 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 ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

- 11) 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, Alzheimer’s, 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) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 2) The medical assessment completed by WVMH reveals that the claimant demonstrates one (1) program qualifying deficit.
- 3) The claimant disagreed with findings for walking, bladder/bowel incontinence, orientation and medication administration.
- 4) In order to receive a deficit for walking, an individual must need at least one person assist in the home. The claimant does not meet the criteria as he is able to walk in the home with the use of a cane at times.
- 5) In order to receive a deficit for bladder/bowel incontinence, an individual must be total incontinent. This is defined as when the recipient has no control of bowel or bladder functions at any time. No deficit can be assessed for incontinence of bladder/bowel as testimony revealed the claimant does make it to the bathroom some of the time.
- 6) In order to receive a deficit for orientation, an individual must be totally disoriented or comatose. The claimant was oriented to time and place at the time of the assessment.
- 7) Testimony and evidence revealed that the claimant does administer his medications. No deficit can be assessed for medication administration.
- 8) Whereas the claimant exhibits only one deficit in the specific categories of nursing services, the claimant's medical eligibility for participation in the Aged & Disabled Waiver Services Program is not established.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the action of the Department 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 1st Day of September, 2006.**

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**Margaret M. Mann**  
**State Hearing Officer**