



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

September 12, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 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 May 8, 2006 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

WVMI  
[REDACTED] Senior Citizens

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

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

**Action Number: 06-BOR-2160**

**v.  
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 September 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 September 7, 2006 on a timely appeal filed July 25, 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 by phone

Department's Witnesses:

Kay Ikerd – Nurse Bureau of Senior Services 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 May 8, 2006
- D-3 Notice of potential denial dated May 12, 2006
- D-4 Notice of termination dated May 30, 2006

**Claimant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) \_\_\_\_\_ is a 65 year-old male. Mr. \_\_\_\_\_ is an active participant in the A/DW program. Mr. \_\_\_\_\_'s A/DW eligibility was undergoing an annual evaluation on May 8, 2006.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant, his spouse and homemaker RN present. The evaluating nurse determined that the claimant had only three (3) qualifying deficits. She assigned a deficit for Mr. \_\_\_\_\_'s need for physical assistance in bathing, grooming and dressing.

- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was Coronary Artery Disease, Congestive Heart Failure, Chronic Obstructive Pulmonary Disease, Diabetes, Gastro Esophageal Reflux Disease, Anxiety and Chronic Renal Failure.
- 4) Claimant's homemaker provides services 2 ½ hours per day 5 days per week.
- 5) The Pre-Admission Screening form page 2 of 6 item 24(D2) indicates there was no decubitus present. Mr. \_\_\_\_\_ indicates that he suffers from leg ulcers which require antibiotic medications and dressings. There was no testimony offered to show that these ulcers were a stage 3 decubitus which is required to receive a deficit.
- 6) The Pre-Admission Screening form page 2 of 6 section 25a (D2) indicates that claimant was assessed as a level 1 Self Prompting in the area of eating. Mr. \_\_\_\_\_ indicates that he is able to feed himself as long as food is thoroughly cooked and soft.
- 7) The Pre-Admission Screening form page 2 of 6 sections 25e and f (D2) indicates that claimant was assessed as a level 2 Less than total incontinence for the bladder and continent for the bowel. Mr. \_\_\_\_\_'s testimony indicates that he does have incontinence related problems with the bladder. He indicates that he usually carries a urinal with him as he cannot always make it to the bathroom in time. There was no testimony offered by Mr. \_\_\_\_\_ that he experienced any problems with bowel incontinence.
- 8) The Pre-Admission Screening form page 2 of 6 section 25g (D2) indicates that claimant was assessed as a level 1 oriented. Mr. \_\_\_\_\_'s testimony indicates that he does experience memory problems due to blockages in the arteries in his head but that he always knows who he is and where he is.
- 9) The Pre-Admission Screening form page 2 of 6 section 25h (D2) indicates that claimant was assessed as a level 2 Supervised/Assistive Device in the area of transferring. Mr. \_\_\_\_\_'s testimony indicates that he can transfer from a chair but not from the couch. If left alone, he stated he will sit in the chair as he knows he cannot get up from couch without the assistance of another person. Also indicates that he cannot get up from bed in the morning without the assistance of either his homemaker or wife.
- 10) The Pre-Admission Screening form page 2 of 6 section 25i (D2) indicates that claimant was assessed as a level 2 Supervised/Assistive Device in the area of walking. Mr. \_\_\_\_\_'s testimony indicates that he walks in the home using walls and furniture for support.
- 11) The Pre-Admission Screening form page 2 of 6 section 27 (D2) indicates that claimant is capable of administering his own medications. Mr. \_\_\_\_\_'s testimony indicates that he does experience difficulty in taking his medications. His hand does not always work properly and he drops medications on the floor and has to try to pick them up. When someone is available, they do place medication into his hand to assure that he receives them. He does take medications on his own during the times that there is no one available to assist him.

**12) 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.

**13) 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.

**14) 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 on May 8, 2006 the WVMI nurse assigned the claimant qualifying deficits in the areas of bathing, dressing, and grooming.
- 2) The issues raised at the hearing were in the areas of decubitus, eating, continence, orientation, transferring, walking and medication administration.
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on May 8, 2006.
- 4) Evidence and testimony admitted during this hearing confirm that in the contested area of decubitus the evaluating nurse properly determined that claimant had no decubitus present. While there was testimony to indicate that claimant's legs do have ulcers and require dressings, there was no testimony offered to indicate that these ulcers met the definition of a stage 3 decubitus which is required to receive a deficit.
- 5) Evidence and testimony admitted during this hearing confirm that the assessment of a level 1 Self/Prompting for eating was appropriately assigned by the evaluating nurse.
- 6) Evidence and testimony admitted during this hearing confirm that the assessment of a level 2 Less than Total Incontinence of the Bladder and Level 1 Continent of the Bowel were appropriately assigned by the evaluating nurse. Claimant does have incontinence of the bladder but it is less than total incontinence. He is aware of the need to void and utilizes a urinal that he carries with him to avoid accidents.

- 7) Evidence and testimony admitted during this hearing confirm that the assessment of a level 1 Oriented was appropriately assigned by the evaluating nurse. Claimant does have memory problems but by his own admission he is not totally disoriented or comatose which is the requirement to receive a deficit.
- 8) Evidence and testimony admitted during this hearing reveal that in the contested area of transferring, the claimant does meet the level 3 One Person Assist definition and should be awarded a deficit. Mr. \_\_\_\_\_'s testimony indicates that he cannot transfer from the couch or out of bed without the assistance of another person. Policy does not indicate that a one person assist is required at all times in transferring to receive a deficit.
- 9) Evidence and testimony admitted during this hearing confirm that the assessment of a level 2 Supervised/Assistive Device for walking was appropriately assigned by the evaluating nurse. Mr. \_\_\_\_\_'s testimony indicates that he utilizes furniture and walls when walking to steady himself. There was no testimony offered to indicate that he requires the assistance of anyone else to be able to walk.
- 10) Evidence and testimony admitted during this hearing confirm that the evaluating nurse's assessment of claimant's ability to administer his own medication is accurate. Policy requires that someone place prescription medications into the client's hand or mouth at all times. Mr. \_\_\_\_\_'s testimony indicates that his medications are placed into his hand when someone is there to assist him but that he takes his medication on his own when he is alone.

## **IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, the Hearing Officer finds that the evaluating nurse assessed the claimant with three (3) deficits in the areas of bathing, dressing and grooming appropriately. In addition, testimony and evidence admitted during this hearing reveal that one additional deficit should be awarded for transferring. This results in a total deficit award of four (4) deficits. Policy requires five (5) deficits to be eligible for services under the Aged/Disabled Waiver Program. The department's proposed action to terminate services through the Aged/Disabled Policy is upheld.

## **X. The RIGHT OF APPEAL:**

See Attachment

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 12th Day of September 2006.**

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**Melissa Hastings  
State Hearing Officer**