



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 24, 2006

\_\_\_\_\_ for

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 20, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver Services 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 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 in denying your application for benefits and services through the Aged & Disabled Title XIX (HCB) Waiver Services Program.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

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

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-6420**

**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 January 24, 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 December 20, 2005 on a timely appeal filed July 14, 2005.

**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's daughter / representative

\_\_\_\_\_, Claimant's son / representative

Kay Ikerd, RN, BoSS (by phone)

██████████, RN, WVMI (by phone)

Presiding at the Hearing was Thomas E. Arnett, 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 participation in the Medicaid, Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual 560 & 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-2000, completed on May 24, 2005

D-3 Potential Denial Notice dated 6/1/05

D-3a Additional information received by WVMI on 6/13/05 from \_\_\_\_\_

D-4 Notice of Termination/Denial dated July 25, 2005

**VII. FINDINGS OF FACT:**

- 1) On or about April 19, 2005, West Virginia Medical Institute, hereinafter WVMI, received the Claimant's application for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW.
- 2) On May 24, 2005, WVMI medically assessed the Claimant to determine medical eligibility and documented their findings in a PAS-2000 (D-2).

- 3) On June 1, 2005, a Notice of Potential Denial 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 2 areas – bathing and grooming.

This notice advises the Claimant that additional medical information will be considered if submitted within the next two weeks. Additional information was received in accordance with notification requirements and has been identified as exhibit D-3a.

- 4) The additional information submitted on behalf of the Claimant, exhibit D-3a, is a handwritten document authored by the Claimant's daughter, \_\_\_\_\_. While this document was reviewed by WVMI, no additional deficits were established.

- 5) A Notice of Denial (D-4) was sent to the Claimant on July 5, 2005. This notices states in pertinent part:

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

**Reason for Decision:** 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 2 areas – bathing and grooming.

- 6) The contested findings on the PAS, specific to the Claimant's medical eligibility, were in the areas of orientation, eating, medication administration and her ability to vacate in the event of an emergency.
- 7) Testimony received to establish a deficit in orientation reveals that the Claimant is sometimes disoriented to time, but is oriented to person and place. In order for an individual to qualify for a deficit in orientation (level 3), the individual must be disoriented x3 (person, place and time) 24 hours a day / 7 days a week. Although testimony reveals some deterioration with regard to the Claimant's orientation, evidence received at the hearing reveals that the Claimant was appropriately assessed as a level II, intermittent disorientation, at the time of the assessment. A deficit cannot be established in the area of orientation.
- 8) The Claimant's ability to vacate her home in the event of an emergency is clearly a concern due to a finding of intermittent disorientation, however, testimony and documentation reveals that she was able to ambulate independently and would require only prompting and supervision to assist in vacating her home. A deficit cannot be established in vacating.

- 9) Evidence reveals that the Claimant was able to eat and cut her food independently at the time of the assessment. Although testimony received at the hearing indicates that Claimant's ability has deteriorated, her ability to eat was correctly assessed by WVMI. A deficit in eating cannot be established.
  
- 10) Testimony reveals that the Claimant required prompting and supervision with medication administration at the time of the assessment. While the Claimant's condition may have worsened since the May 2005 assessment, the Claimant's condition at the time of the assessment is consistent with the level indicated on the PAS. A deficit in medication administration cannot be established.
  
- 11) 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.
  
- 12) 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.
  
- 13) 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 the following assessment elements on the PAS:

  - A. # 24: Decubitus - Stage 3 or 4
  - B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.

C. #26: Functional abilities of individual in the home.

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 incontinent)

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 or two 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. #27: Individual has skilled needs in one or more of these areas – (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

E. #28: The individual is not (c) capable of administering his/her own medications.

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

- 1) A medical assessment was completed on the Claimant to determine eligibility for participation in the Aged/Disabled Waiver Program on May 24, 2005.
- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 3) The May 24, 2005 medical assessment completed by WVMi identified two (2) program qualifying deficits – bathing and grooming.
- 4) Evidence submitted at the hearing fails to identify any additional deficits that existed at the time of the assessment.
- 5) Because the Claimant exhibited deficits in only two (2) of the specific categories of nursing services, the Claimant's medical eligibility for participation in the Aged & Disabled Waiver Services Program cannot be established.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to deny your application for benefits and services through 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 24th Day of January 2006.**

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**Thomas E. Arnett**  
**State Hearing Officer**