



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

March 23, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 22, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your 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 continues to 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 **reverse** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
WVMI  
BoSS  
Family Services of [REDACTED] County

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

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

**Action Number: 05-BOR-6704**

**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 March 23, 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 February 22, 2006 on a timely appeal filed September 26, 2005.

It should be noted here that the Claimant's benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending a hearing decision.

**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 Aid, Family Services of ██████████ County  
██████████, RN, WVMI (by phone)  
Kay Ikerd, RN, BoSS (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 continues to be 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 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 August 9, 2005
- D-3 Notice of Potential Denial from WVMI dated August 22, 2005
- D-3a Correspondence from \_\_\_\_\_ – Received by BMS on August 31, 2005
- D-4 Notice of Termination/Denial dated September 19, 2005

**VII. FINDINGS OF FACT:**

- 1) On August 9, 2005, the Claimant was reevaluated (medically assessed) by West Virginia Medical Institute (WVMI) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW, and to confirm the appropriate Level of Care.
- 2) The medical assessment (exhibit D-2) completed by WVMI determined that the Claimant is no longer medically eligible to participate in the ADW Program and on August 22, 2005, the Claimant was notified of WVMI's decision via a Potential Denial Notice (exhibit D-3). 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 3 areas – Bathing, Grooming and Continence.

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

The Claimant was notified that she could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final decision was made. Additional information was received and has been identified as exhibit D-3a.

- 3) A termination notice (exhibit D-4) was sent to the Claimant on September 19, 2005. 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 3 areas – Bathing, Grooming and Continence.

- 4) The Claimant disagreed with the finding in section 34 (a) that indicates she exhibits substance abuse. She indicated that she does not use drugs or alcohol and objects to this being included in her medical chart. While this area of the PAS has nothing to do with eligibility, it was explained that substance abuse was marked “yes” because the claimant smokes (uses tobacco) which contains the drug nicotine. Based on the evidence, this area of the PAS has been marked correctly, however, it is noted that there are no other claims related to substance abuse - drug, alcohol, or otherwise, by the Department.
- 5) With regard to vacating in the event of an emergency, the Claimant testified that she had hip replacement surgery three years ago and that she is scared to attempt steps without someone to help her. She stated that while holding on to the railing helps her considerably, she sometimes loses her balance and is afraid she will fall. The Claimant has been identified as a level-2 (supervised / assistive device) in walking and transferring which further substantiates difficulty with mobility. Based on this evidence, a deficit vacating in the event of an emergency is established (+1).
- 6) The issue of dressing was contested by the Claimant as she stated that she had shoulder surgery approximately 3 years ago and she has never regained full mobility. She stated that she often has trouble fastening her bra and pulling down her shirt. She has also bought a device to assist her with pulling up her socks due to difficulty reaching her feet. Exhibit D-2 also notes that the Claimant’s homemaker reported during the assessment that the Claimant needs help with dressing (exhibit D-2, last sentence on page 7 of 8). While testimony reveals that the Claimant sometimes gets dressed independently on the weekends, the evidence reveals that the Claimant requires assistance with dressing more often than not. Based on this evidence, a deficit in dressing is therefore awarded (+1).

7) The Claimant contested WVMI's findings in walking and transferring, however, there was insufficient evidence to change the Department's findings. A review of the testimony and documentation submitted in this case confirms that the Claimant has been correctly assessed at a level-2 (supervised / assistive device) in the home. The Claimant does not qualify for a deficit in walking or transferring.

8) 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.

9) 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.

10) 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 continued medical eligibility for participation in the Aged/Disabled Waiver Program on August 9, 2005.
- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 3) The medical assessment completed by WVMi reveals that the Claimant demonstrates three (3) program qualifying deficits – Bathing, Grooming and Continence.
- 4) Evidence submitted at the hearing identified two (2) additional deficits – Vacating and Dressing.
- 5) Whereas the Claimant exhibits deficits in five (5) of the specific categories of nursing services, the Claimant’s continued medical eligibility for participation in the Aged & Disabled Waiver Services Program is therefore established.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to terminate your 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 23rd Day of March, 2005.**

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**Thomas E. Arnett  
State Hearing Officer**