



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street West  
Charleston, WV 25313

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 5, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 4, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Aged and Disabled Waiver case.

In arriving at a decision, the State Hearings 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 Aged and Disabled Waiver services Program is based on current policy and regulations. Some of these regulations state as follows: Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care. Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT).

The information submitted at your hearing revealed: You meet the continued medical eligibility criteria for Waiver Services.

It is the decision of the State Hearings Officer to REVERSE the PROPOSAL of the Department to deny your Aged and Disabled Waiver case.

Sincerely,

Ray B. Woods, Jr., M.L.S.  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Libby Boggess, RN – BoSS  
[REDACTED], RN – WVMI  
[REDACTED], Case Manager - CCIL

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-6777**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 5, 2006 for Ms. \_\_\_\_\_. 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 originally scheduled on January 4, 2006 on a timely appeal filed November 9, 2005

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was not held between the parties and, Ms. \_\_\_\_\_ did not have legal representation.

**II. PROGRAM PURPOSE:**

The Program entitled Aged and Disabled Waiver Services 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

\_\_\_\_\_, Friend

\_\_\_\_\_, Aide - Kanawha Home Health (Observing)

\_\_\_\_\_, Case Manager – Coordinating Council for Independent Living (CCIL)

Libby Boggess, RN – Bureau of Senior Services (BoSS)

\_\_\_\_\_, RN – West Virginia Medical Institute (WVMI)

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided: Does Ms. \_\_\_\_\_ meet the continued eligibility criteria for the Aged and Disabled Waiver Services Program?

**V. APPLICABLE POLICY:**

WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*

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

**Department's Exhibits:**

D-1 WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*

D-2 PAS dated 08/23/05 with Informed Consent

D-3 Letter of Potential Denial dated 08/29/05

D-4 Letters from Physician and CCIL re: Need for Services

D-5 Termination Notice dated 10/04/05

D-6 Scheduling Notice dated 11/14/05

D-7 Request For Hearing dated 10/13/05

D-8 Miscellaneous Hearing Documents

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

1) This issue involves the denial of continued services under the Aged and Disabled Waiver Services Program. The re-evaluation assessment was completed on August 23, 2005, (Exhibit D-2), for Ms. \_\_\_\_\_. Ms. \_\_\_\_\_'s Primary Diagnoses were: Coronary Artery Disease; Diabetes; Congestive Heart Failure and; History of Deep Vein Thrombosis. Those present during the assessment were Ms. \_\_\_\_\_; \_\_\_\_\_ (Homemaker) and, Ms. \_\_\_\_\_, R.N.,

of the West Virginia Medical Institute. Ms. [REDACTED] determined that Ms. \_\_\_\_\_ had four (4) of the required five (5) deficiencies for continued services. The deficiencies were: Vacating a building; Bathing; Grooming and; Dressing. It should be noted that the determination was based solely on a single days visit.

The West Virginia Medical Institute sent a letter of Potential Denial, (Exhibit D-3), to Ms. \_\_\_\_\_ on August 29, 2005. The letter stated there were four (4) deficits on the PAS. Ms. \_\_\_\_\_ was permitted to submit additional documentation within two weeks of the letter. The WVMI received letters submitted by the Coordinating Council for Independent Living (CCIL) and the Physician (Exhibit D-4). The WVMI received additional information after the deadline that was not reviewed. A Termination Letter was issued by WVMI on October 4, 2005. (Exhibit D-5). Ms. \_\_\_\_\_ completed a Request for Hearing, (Exhibit D-7), which was received by the Bureau for Medical Services on October 13, 2005.

2) At the hearing, Ms. Libby Boggess, R.N., of the Bureau of Senior Services explained the Aged and Disabled Waiver Policy. There were no questions for Ms. Boggess.

3) Ms. [REDACTED], RN reviewed the PAS dated August 23, 2005.

4) The only area of concern was “Sterile Dressing” listed under Question #27: Professional and Technical Care needs. Ms. [REDACTED] marked it as “No” with a notation that Ms. \_\_\_\_\_’s back of leg had a dressing. Ms. [REDACTED] testified that a “Sterile Dressing” is considered when the application is done in a sterile environment with gloves. Ms. \_\_\_\_\_ testified that the day after the PAS evaluation, she was treated at the Thomas Memorial Hospital Wound Center. Additional follow-up treatments were done at the hospital and by the home health agency. Ms. [REDACTED] and Ms. Boggess agreed that this would be considered a deficit. **Ms. \_\_\_\_\_ receives a deficit for “Sterile Dressing.”**

5) Ms. \_\_\_\_\_ receives a total of 5 deficits for continued medical eligibility.

**6) 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:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

**7) Aged/Disabled Home and Community Based Services Manual § 570.1.a. - Purpose:**

The purpose of the medical eligibility review is to ensure the following:

- \* New applicants and existing clients are medically eligible based on current and accurate evaluations.
- \* 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.
- \* The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

**8) 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
- #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.
- B. #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)
- C. #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.
- D. #28: The individual is not (c) capable of administering his/her own medications.

**VIII. CONCLUSIONS OF LAW:**

The Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria states in part, “An individual must have five deficits on the PAS to qualify medically for the ADW Program.”

Ms. \_\_\_\_\_ receives an additional deficit for “Sterile Dressing”. This gives her a total of five (5) deficits to meet the medical criteria for continued services.

**IX. DECISION:**

It is the decision of this State Hearing Officer to REVERSE the PROPOSAL of the Department in this particular matter.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 5th Day of January 5, 2006.**

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**Ray B. Woods, Jr., M.L.S.  
State Hearing Officer**