



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

February 10, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 31, 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 August 25, 2005 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,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
██████, CWVAS - Boggess, BoSS - ██████, WVMI

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-6919**

**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 31, 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 January 31, 2006 on a timely appeal, filed November 7, 2005.

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

\_\_\_\_\_, Central WV Aging Services (CWVAS)

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone

\_\_\_\_\_, WVMI nurse, by phone

Presiding at the Hearing was Sharon K. Yoho, 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 August 25, 2005

D-3 Eligibility Determination dated August 25, 2005

D-4 Notice of potential denial dated September 12, 2005

D-5 Notice of termination dated October 25, 2005

**Claimant's Exhibits:**

C-1 Statement from Physical Therapist dated September 16, 2005

**VII. FINDINGS OF FACT:**

- 1) Ms. \_\_\_\_\_ is a 65-year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on August 25, 2005.
- 2) A Pre-Admission Screening (PAS) was completed in the home with the claimant. This PAS evaluation determined that the claimant had only three (3) qualifying deficits. The evaluating nurse assigned a deficit for Ms. \_\_\_\_\_'s inability to vacate in an emergency. The nurse assigned a deficit for needing others to cut food up on the claimant's plate since her arthritis prevents her from being able to do this. The nurse also assigned a deficit for incontinence.

- 3) Ms. \_\_\_\_\_ has had a total of five (5) strokes. Two (2) of these strokes occurred on August 28, 2005 which was three days after the PAS was completed.
- 4) The claimant took issue with the fact that just three days following the PAS, she was not able to do many things for herself.
- 5) Ms. [REDACTED] provided additional information to the Department regarding the events that followed the PAS. She sent a note from Ms. \_\_\_\_\_'s Physical Therapist which stated that Ms. \_\_\_\_\_ had suffered a stroke on the 28<sup>th</sup> of August and she lost strength in her right side. It further stated that she would need help with her ADLs.
- 6) Ms. [REDACTED] called the Physical Therapist who advised her that Ms. \_\_\_\_\_ had made substantial recovery from the recent strokes.
- 7) Ms. \_\_\_\_\_ agreed that the PAS was accurate as of August 25, 2005. She agrees that she was, at that time, able to bath, dress, and groom without the assistance of others.
- 8) Aged/Disabled Home and Community Based Services Manual §570 – Program Eligibility for client:

Applicants for the A/DW 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 A/DW Program as an alternative to NF 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 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.
- 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 A/DW 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 B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.
  - E. #28: The individual is not capable of administering his/her own medication.

**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 the WVMI nurse assigned the claimant only three (3) qualifying deficits in the areas of vacating, eating and incontinence.

- 2) The issue raised at the hearing was regarding the claimant's condition after the date of the PAS completion. Policy stipulates that medical eligibility is based on the client's condition and abilities on the day of the PAS.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse accurately assessed the claimant with three (3) qualifying deficits at the PAS. With the authority granted to me by the WV State Board of Review I am further ruling to **uphold** the Agency's proposed action to discontinue this claimant's 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 10th Day of February 2006.**

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**Sharon K. Yoho  
State Hearing Officer**