



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

May 31, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 5, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Aged/Disabled (HCB) Title XIX 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.

Eligibility for the Aged/Disabled Waiver 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 a 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 Section 570]

Information submitted at your hearing revealed that you do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
Select In-Home Services

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-6983**

**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 May 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 May 5, 2006 on a timely appeal filed November 10, 2005. The hearing was originally scheduled for March 17, 2006, but was rescheduled at the Claimant's request.

**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  
\_\_\_\_\_, Homemaker, Select In-Home Services  
\_\_\_\_\_, owner, Select In-Home Services  
\_\_\_\_\_, RN, Select In-Home Services  
\_\_\_\_\_, daughter of Claimant  
Kay Ikerd, RN, BoSS (participating telephonically)  
\_\_\_\_\_, RN, WVMI (participating telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 Agency is correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Section 570

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 570
- D-2 Pre-Admission Screening (PAS) 2000 assessment completed on September 27, 2005
- D-3 Notice of Potential Denial dated October 11, 2005 and additional information
- D-4 Notice of Denial dated November 4, 2005

**Claimant's Exhibits**

- C-1 Letter from \_\_\_\_\_ dated October 25, 2005
- C-2 Letter from \_\_\_\_\_ dated March 22, 2006

**VII. FINDINGS OF FACT:**

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing a reevaluation to determine continued medical eligibility.
- 2) West Virginia Medical Institute completed a medical assessment (D-2) on September 27, 2005 and determined that the Claimant is not medically eligible to participate in the ADW Program.

- 3) The Claimant was notified of the potential denial (D-3) on October 11, 2005 and advised that she had two weeks to submit additional medical information. Additional information was submitted, however it did not change the PAS findings.
- 4) On November 4, 2005, a denial notice (D-4) was sent to the Claimant.
- 5) Ms. [REDACTED] reviewed the PAS 2000 (D-2) and testified that zero (0) deficits were established for the Claimant as a result of her assessment.
- 6) The Claimant and her witnesses contended that additional deficits should be awarded in the following areas:

***Inability to vacate in the event of an emergency-*** Witnesses contended that the Claimant, who has multiple sclerosis, would be unable to vacate the building in the event of an emergency. Ms. [REDACTED] testified that she stands behind the Claimant as she walks upstairs using the handrail. Ms. [REDACTED] testified that she has not witnessed the Claimant climb up and down the stairs alone and does not believe the Claimant is capable of traversing the stairs alone. A letter from Dr. [REDACTED] (C-2), the Claimant's psychiatrist, expresses concerns about the Claimant's ability to vacate her building "without prompting and some help secondary to her ambulation difficulties."

Ms. [REDACTED] testified that she witnessed the Claimant walk up 15 steps unassisted on the date of the assessment. She testified that the Claimant stated that she could vacate independently or could exit the building through a window and go onto the roof in the event of an emergency. The Claimant contended that she told Ms. [REDACTED] that she could "maybe" vacate the building in the event of an emergency.

***Because Ms. [REDACTED] testified that the Claimant walked up 15 steps to her apartment unassisted on the date of the assessment, no deficit is awarded for inability to vacate as the Claimant was physically able to vacate the building at that time.***

***Inability to administer medication-*** The Claimant testified that she writes down her medications and her homemaker looks over the list. Ms. [REDACTED] testified that she looks over the information and ensures that the Claimant takes the right dosages.

Ms. [REDACTED] testified that the Claimant told her she could take out her medications and place them in her mouth.

***No deficit is awarded in this area since no testimony was offered to indicate that the Claimant needs assistance beyond prompting/supervision in this area.***

***Physical assistance with bathing, dressing and grooming-*** Ms. [REDACTED] testified that she helps the Claimant comb her hair and apply lotion on some days. Ms. [REDACTED] also testified that she assists the Claimant if her shirt is buttoned and/or her shoes are tied incorrectly. Ms. [REDACTED] testified that the Claimant requires assistance with washing her hair. The Claimant testified that she has a shower seat and that she waits until Ms. [REDACTED] arrives in order to bathe because she is afraid of falling. She stated that Ms. [REDACTED] hands her the items that she needs. The letter from Dr. [REDACTED] (C-2) states that the Claimant requires "significant prompting" with grooming, dressing and bathing.

Ms. [REDACTED] testified that the Claimant told her that she needed no assistance with bathing, dressing or grooming on the date of the assessment. In addition, Ms. [REDACTED] addressed an assessment form completed by [REDACTED] RN, a former Select In-Home Services employee who was present when the PAS was completed. Dated October 21, 2005, the assessment was submitted to WVMI as additional information (D-2) and indicates that the Claimant bathes, dresses and grooms independently.

***Because information provided at the hearing conflicts with data recorded on the PAS and RN Assessment Form, no additional deficits are awarded for physical assistance with bathing, dressing and grooming***

***Physical assistance with walking and transferring-*** Ms. [REDACTED] testified that she walks behind the Claimant on the stairs and holds her back and hip until they reach the top. Ms. [REDACTED] testified that her mother is very uncoordinated. The RN Assessment Form indicates that the Claimant needs assistance with walking and ambulation, but does not specify the type of assistance other than noting that a cane is used in the home.

Ms. [REDACTED] testified that the Claimant opened the door and climbed the steps without hesitation on the date of the assessment. She stated that the Claimant transferred and ambulated without difficulty and used no assistive devices. Ms. [REDACTED] said the Claimant had indicated that she has a cane, but does not use it inside the home.

***No deficits are awarded in these areas because testimony is credible that the Claimant ambulated and transferred without difficulty on the date of the assessment.***

***Incontinence of bladder/bowel-*** Ms. Price testified that the Claimant is incontinent of urine at all times, but is embarrassed to provide certain information to others. Ms. [REDACTED] testified that the Claimant has had both bladder and bowel accidents in public. She wears protective pads and adult diapers.

Ms. [REDACTED] testified that the Claimant reported having occasional leakage on the date of the assessment. PAS comments quoted the Claimant as stating the accidents occur “probably about three times a week, but maybe not that much.” The RN Assessment Form indicates that the Claimant has “occasional stress incontinence.”

***No deficit is awarded for incontinence of bladder/bowel as information concerning the frequency of incontinent episodes is inconclusive and the Claimant was rated on the PAS as being occasionally incontinent in these areas.***

***Eating-*** Witnesses testified that the Claimant’s hands go numb and food must be cut up for her. In addition, Ms. [REDACTED] testified that her mother needs food cut up because of choking.

Ms. [REDACTED] testified that the Claimant reported that she could feed herself on the date of the assessment and the RN Assessment Form indicates that the Claimant eats independently.

*No deficit is awarded in this area since information presented by the Claimant's witnesses contradicts data recorded on the PAS and RN Assessment Form.*

**Vision-** The Claimant reportedly has uncorrectable vision problems that were addressed by her witnesses, however, vision is not an area for which a deficit can be awarded in assessing medical eligibility.

In conclusion, Ms. [REDACTED] testified about a [REDACTED] Hospital discharge summary completed by Dr. [REDACTED] (D-3) which was received by WVMI as additional information after the PAS was completed. The summary, which was completed in conjunction with a transient ischemic attack (mini stroke) the Claimant suffered in October 2005, notes that the Claimant's upper and lower extremity motor strength is 5/5 with sensory of 5/5. Ms. [REDACTED] testified that these are the highest scores attainable when measuring motor strength.

- 7) 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.

- 8) 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.

- 9) 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. #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) Policy clearly specifies that an individual must be awarded five (5) deficits on the PAS 2000 in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received zero (0) deficits on the PAS completed by Ms. [REDACTED] in conjunction with her annual medical reevaluation.
- 3) As a result of testimony presented during the hearing, zero (0) additional deficits are awarded. While the Claimant's witnesses challenged several areas in regard to the PAS findings, medical documentation fails to support these contentions.
- 4) The Department's decision to terminate the Claimant's Aged/Disabled Waiver Services is correct.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's 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 31st day of May, 2006.**

---

**Pamela L. Hinzman  
State Hearing Officer**