



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

March 13, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 27, 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 November 02, 2005 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** 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  
██████████ CCIL - Boggess, BoSS - ██████████ WVMI - ██████████ WV Advocates

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-7130**

**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 February 27, 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 27, 2006 on a timely appeal, filed December 13, 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's daughter

\_\_\_\_\_, claimant's daughter

\_\_\_\_\_, claimant's daughter

\_\_\_\_\_ claimant's physician

\_\_\_\_\_ RN, Select in Home Services

\_\_\_\_\_ RN, Coordinating Council for Independent Living (CCIL)

Todd Rundle, WV Advocates, claimant's legal representative

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 November 2, 2005

D-3 Eligibility Determination dated November 2, 2005

D-4 Notice of potential denial dated November 16, 2005

D-5 Notice of termination dated December 6, 2005

**Claimant's Exhibits:**

C-1 Letter from \_\_\_\_\_ dated November 22, 2005

C-2 Plan of Care/Homemaker Worksheet

C-3 Legislative Rule 64CSR60

C-4 Olmstead v. LC. and Executive Order

## VII. FINDINGS OF FACT:

- 1) Ms. \_\_\_\_\_ is an 81-year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on November 2, 2005.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant and her daughter, \_\_\_\_\_, present. This PAS evaluation determined that the claimant had only three (3) qualifying deficits. The evaluating nurse assigned a deficit for Ms. \_\_\_\_\_'s need for physical assistance in bathing, grooming and dressing.
- 3) Issues addressed by the claimant's witnesses were in the areas of transfer, ambulate, vacate, eating and self-medicating.
- 4) The claimant demonstrated to the evaluating nurse that she could rise up from a chair and ambulate approximately 35 feet and return to a sitting position. The nurse observed the claimant's use of a chair and table to transfer and use of furniture and walls for support in ambulating. Ms. \_\_\_\_\_ gets short of breath when she ambulates. Dr. \_\_\_\_\_ has not witnessed Ms. \_\_\_\_\_ efforts to ambulate within her home, but recommends hands on assistance in ambulating and transfer. Daughter, \_\_\_\_\_ and daughter, \_\_\_\_\_ testified that their mother has fallen. There was no testimony given as to how many falls she has had. When asked how many falls have occurred, Ms. \_\_\_\_\_, did not respond with a number.
- 5) There was much concern raised regarding Ms. \_\_\_\_\_'s ability to vacate the home in the event of an emergency. Ms. \_\_\_\_\_ testified that Ms. \_\_\_\_\_ could not get out of her home without hands on assistance when she is taken for appointments.
- 6) Ms. \_\_\_\_\_ does require assistance in cutting up meats and some softer foods on her plate. Ms. \_\_\_\_\_ has numbness and lack of strength in her fingers and hands due to arthritis. Ms. \_\_\_\_\_ states she has never known Ms. \_\_\_\_\_ to be able to cut up her own food. Ms. \_\_\_\_\_ reported to the evaluating nurse that she was able to cut up her food.
- 7) Ms. \_\_\_\_\_ takes 17 different medications and has attempted to take her own medication. Her daughter reports that she drops pills on the floor due to the numbness in her fingers and hands. Both Ms. \_\_\_\_\_ and Ms. \_\_\_\_\_ report that their mother has taken her evening pills instead of her morning pills. They have found her sound asleep on her couch in the morning and discovered that she had taken the wrong pills. \_\_\_\_\_ stated that Ms. \_\_\_\_\_ probably could take her own medicine. He then stated that she should be able to self-administer her pills. He then stated that she could take pills without assistance. He was more concerned about her inability to administer her insulin injections. Ms. \_\_\_\_\_ says that she hands her mother's pills to her to take.

- 8) 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.

- 9) 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.

- 10) 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).

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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)

- 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 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. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

## 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 bathing, dressing and grooming.
- 2) The issue raised at the hearing were in the areas of transfer, ambulate, vacate, eating and self medicating. The WVMI nurse observed Ms. \_\_\_\_\_ successfully transfer and ambulate during the evaluation using furniture and walls for assistance. Testimony regarding her need for physical assistance was not convincing. Policy indicates that if a client is not rated with a level III in ambulating or in orientation, vacating cannot be assigned as a deficit.
- 3) Ms. \_\_\_\_\_ does require others to cut up meats on her plate. She has numbness and lacks strength in her fingers and hands. The claimant told the nurse that she could cut up food on her plate, but the types of food appear to have not been addressed by her or the nurse during the evaluation. The claimant takes 17 different medications and cannot be trusted to take her own medication. She drops pills due to the numbness in her fingers and hands and she has been known to take her evening pills in the morning. Her daughter has to hand the pills to her to take. \_\_\_\_\_ testimony regarding medicating was not convincing. His testimony revealed that he was unsure of her abilities in this area. He used the words: "probably could", "should be able to" and then "she could."
- 4) The evaluating nurse should have assessed two additional points in the areas of eating and medicating.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse should have assessed the claimant with five (5) qualifying deficits at the PAS. With the authority granted to me by the WV State Board of Review I am further ruling to **reverse** the Agency's proposed action to discontinue this claimant's services under the Aged/Disabled Title XIX (HCB) Waiver program.

**IX. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 13th Day of March 2006.**

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**Sharon K. Yoho**  
**State Hearing Officer**