



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

April 24, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 5, 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 15, 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: 06-BOR-849**

**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 April 5, 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 April 5, 2006 on a timely appeal, filed January 17, 2006.

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
- \_\_\_\_\_, claimant's son
- \_\_\_\_\_, claimant's future daughter-in-law
- \_\_\_\_\_, homemaker aide
- \_\_\_\_\_, case manager, CWVAS
- \_\_\_\_\_, homemaker RN, Companion Care

Department's Witnesses:

- Cathy Zuspan, 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 15, 2005
- D-3 Eligibility Determination dated November 15, 2005
- D-4 Notice of potential denial dated December 8, 2005
- D-5 Notice of termination dated January 9, 2006

**Claimant's Exhibits:**

- C-1 Letter from Dr. \_\_\_\_\_ dated December 14, 2005

**VII. FINDINGS OF FACT:**

- 1) Ms. \_\_\_\_\_ is a 70-year-old female who suffers from severe rheumatoid arthritis. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on November 15, 2005.

- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant, [REDACTED], [REDACTED] and [REDACTED] present. The evaluating nurse determined that the claimant had only three (3) qualifying deficits. She 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 walking, transferring, vacating, incontinence and medicating.
- 4) Ms. \_\_\_\_\_ and Ms. [REDACTED] advised the evaluating nurse during the assessment that the claimant at times, needs someone near her when she walks. She ambulates using a walker. The evaluating nurse observed Ms. \_\_\_\_\_ rise from her lift chair and ambulate using her walker. Ms. \_\_\_\_\_ reported to the nurse that she gets up on her own at night many times and goes to the bathroom. Ms. \_\_\_\_\_ testified that there are days when she cannot get up out of her chair and sometimes cannot get up off the commode.
- 5) The claimant is able to get her medications from her pre-filled pillbox or from the table where the homemaker lays them and put them in her mouth. Ms. [REDACTED] indicated that sometimes Ms. \_\_\_\_\_ will drop a pill and someone else must retrieve it for her.
- 6) Ms. \_\_\_\_\_ does have daily problems with urinary incontinence. She has excessive urges to urinate but often times is not able to void when she gets to the bathroom. She will therefore ignore urges at times and consequently urinate in her pants. She wears depends due to these episodes. She is successful at times at getting to the toilet and urinating in it.
- 7) The claimant's witnesses raised concerns regarding Ms. \_\_\_\_\_'s potential for success in vacating in the event of an emergency.
- 8) Physician's letter, Exhibit C-1, advised that Ms. \_\_\_\_\_'s rheumatoid arthritis is slightly improved but that she could still not walk unassisted. The physician also confirmed that the claimant needs help with bathing, grooming and dressing and that she does have urinary incontinence.
- 9) The evaluating nurse did assign a deficit for bathing, dressing and grooming. She did make note that Ms. \_\_\_\_\_ does require the assistance of a walker for ambulating. The nurse also addressed problems with urinary incontinence.
- 10) 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.

11) 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.

12) 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 issues raised at the hearing were in the areas of ambulating, transferring, vacating, medicating and incontinence. The information gathered at the evaluation from Ms. \_\_\_\_\_ and Ms. \_\_\_\_\_ clearly showed that the claimant could ambulate with the assistance of her walker but at times, she needs someone nearby. Policy stipulates that to be assigned a deficit for vacating; the client must be assessed at a level III in walking or orientation. The claimant is not a level III in either of these categories. Ms. \_\_\_\_\_ does have some problems with bladder incontinence, but policy provides that to be assigned a deficit for incontinence; the client must be totally incontinent of bladder and or bowel. Ms. \_\_\_\_\_ is able to take her own medication and to assist in the filling of her daily pill container. The occasional dropping of a pill would not indicate that she needs someone to place the pills in her hand or mouth. The notation and testimony provided by the evaluating nurse did not clearly confirm that Ms. \_\_\_\_\_ does not need hands on assistance with transferring. The nurse observed Ms. \_\_\_\_\_ transfer from a lift chair and Ms. \_\_\_\_\_ told the nurse that she could get out of bed on her own. Ms. \_\_\_\_\_ testified that there are many times in which she unable get up from the toilet or out of her chair without hands on assistance from others.
  
- 3) Had the evaluating nurse assigned a deficit for transferring, the claimant would still not have the required five (5) deficits dictated by policy to qualify for the program.

### **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 a deficit for transferring. Four (4) qualifying deficits would not change the decision made by the Department. With the authority granted

to me by the WV State Board of Review, I am 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 24th Day of April 2006.**

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**Sharon K. Yoho  
State Hearing Officer**