



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 6, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 30, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny services under the Aged Disabled Waiver, ADW, 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 ADW 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 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the July 17, 2007 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 Hearing Officer to **uphold** the action of the Department to deny services under the ADW Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
[REDACTED], WVMI

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

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Claimant,

v.

Action Number: 07-BOR-2050

**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 October 30, 2007 for █ on a timely appeal filed August 30, 2007. 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.

It should be noted here that the Claimant's benefits have been denied.

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.

- 3) A WV Medical Institute (WVMI) Nurse completed the Pre-Admission Screening (PAS) assessment in the Claimant's home with her, the Claimant, and the Claimant's homemaker present. The nurse determined from the answers given to her by the Claimant that she had four qualifying deficits. These were that the Claimant needs physical assistance with eating, bathing, grooming and would need physical assistance to vacate in the event of an emergency.
- 4) The issues addressed by the Claimant and her witnesses were in the areas of bladder/bowel incontinence, orientation, walking and medication administration.
- 5) The Claimant was assessed as continent bladder/bowel, oriented, and as being able to administer her own medication with prompting/supervision. The PAS (Exhibit D-2) reads in part that when it comes to her bladder client states she does have trouble going to the bathroom and she also has trouble with her bladder stopping. She denies having any accidents on herself with her bladder. When it comes to her bowels client states she does not have any accidents on herself with her bowels. She states she did have diarrhea this past weekend and did not realize this until she sat on the commode. She denied having any accidents on herself. Orientation: When it comes to her orientation client states she can go into the kitchen for something and forget what she went for. Client notes she never looks at the calendar and states she writes down the date in her diabetic book everyday. Client denies getting her home confused. Client was aware of who she is and where she was at. Client also aware of the month and year. Medication Administration: Homemaker has to remind the client to take her meds. Testimony from the WVMI RN revealed that she felt the Claimant was giving her accurate information during the assessment. It is noted in the assessment that the Claimant uses a cane as she walks. She was assessed as needing supervised/assistive device for transferring and walking.
- 6) Testimony from LL revealed that the Claimant has bladder incontinence and some accidents with her bowels. She had a stroke a little over a year ago. Since that time she has come somewhat forgetful about taking her medications. Someone has to set her medicines up in a box and her provider has to remind her to take the medications. She now has to take insulin and must be reminded. She needs a cane to walk.
- 7) Testimony from WP revealed that he has observed his mother forget to take her medication. He is afraid she is going to "double dose" on her medication. She takes approximately seventeen (17) medications. She uses a cane in the home.
- 8) Testimony from the Claimant revealed she can't walk very far without getting short of breath. The doctor wants to put her on oxygen. She has accidents with her bladder. She has diarrhea. She didn't tell the nurse about these accidents at the time of the assessment because she was ashamed to tell. The Claimant explained how she administers her insulin.
- 9) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

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.

**10) Aged Disabled Home and Community-Based Services Manual Section 503.1:
MEDICAL ELIGIBILITY**

A QIO under contract to BMS determines medical eligibility for the ADW Program.

**11) Aged Disabled Home and Community-Based Services Manual Section 503.1.1
PURPOSE:**

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

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW 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 503.2
MEDICAL CRITERIA:**

An individual must have five deficits on the Pre-Admission Screening Form (PAS), to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

#24 Decubitus; Stage 3 or 4

#25 In the event of an emergency, the individual is c) mentally unable to vacate or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits.

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

- a. Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- b. Bathing ----- Level 2 or higher (physical assistance or more)
- c. Grooming--- Level 2 or higher (physical assistance or more)
- d. Dressing ---- Level 2 or higher (physical assistance or more)
- e. Continence-- Level 3 or higher; must be incontinent
bowel

f. Continence-- bladder	Level 3 or higher; must be incontinent
g. Orientation--	Level 3 or higher (totally disoriented, comatose)
h. Transfer-----	Level 3 or higher (one person or two person assist in the home)
i. Walking-----	Level 3 or higher (one person assist in the home)
j. 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)

#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.

#28 The individual is not capable of administering his/her own medications.

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 determined that the Claimant had four (4) qualifying deficits. Those were that she needs physical assistance with eating, bathing, grooming and is physically unable to vacate in the event of an emergency.
- 2) The issues raised at the hearing were in the areas of bladder/bowel incontinence, orientation, walking, and medication administration.
- 3) The Claimant reported to the nurse at the time of assessment that she was continent of bladder and bowel. Testimony at the hearing revealed that she does have some incontinence of bladder and bowel. However, this would not change the original determination at the time of the assessment. No additional deficit will be awarded for continence.
- 4) In order to receive a deficit for orientation, one must be totally disoriented, comatose. The Claimant does not meet the criteria. She was correctly assessed as being oriented at the time of the assessment. No additional deficit will be awarded for orientation.
- 5) In order to receive a deficit for walking, one must need one-person assistance in the home. The information provided at the hearing shows that the Claimant uses a cane to walk in her home. No additional deficit will be awarded for walking.
- 6) In order to receive a deficit for medication administration, one must be incapable of administering her own medications. The information provided at the hearing shows that the Claimant must be reminded but that she is capable of administering her medications. No additional deficit will be awarded for medication administration.

- 7) There are a total of four deficits awarded on the assessment completed July 17, 2007. This Claimant is not medically eligible for the ADW program and does not need the level of care provided in a nursing facility.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, the Department is upheld in their determination that this Claimant is not medically eligible for the Aged Disabled Title XIX (HCB) Waiver program. This is based on the information provided at the assessment on July 17, 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of November, 2007.

**Margaret M. Mann
State Hearing Officer**