



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**4190 Washington Street West**  
**Charleston, WV 25313**

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

April 25, 2007

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 25, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the Aged and Disabled Waiver Services Program.

In arriving at a decision, the State Hearings 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 and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows:

Applicants for the ADW 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 Social Security Administration (SSA) if an active SSI (Supplemental Security Income) recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS).

The information submitted at your hearing revealed: You do not meet the medical eligibility criteria for the Aged and Disabled Waiver Services Program.

It is the decision of the State Hearings Officer to **uphold** the **action** of the Department to deny your application.

Sincerely,

Ray B. Woods, Jr., M.L.S.  
State Hearing Officer  
Member, State Board of Review

cc: State Board of Review  
Ms. Kay Ikerd, RN – Bureau of Senior Services  
Ms. [REDACTED] RN – West Virginia Medical Institute  
Ms. [REDACTED] CM – Kelly Home Care

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 07-BOR-822**

**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 25, 2007 for Ms. \_\_\_\_\_. 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 25, 2007 on a timely appeal filed February 21, 2007.

It should be noted here that the Claimant was not receiving any benefits under the Aged and Disabled Waiver Services Program, and she was not represented by Counsel. A pre-hearing conference was not held between the Claimant; Bureau of Senior Services; and/or West Virginia Medical Institute.

**II. PROGRAM PURPOSE:**

The Program entitled Aged and Disabled Waiver Services Program 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  
\_\_\_\_\_, Case Manager – Kelly Home Care  
Kay Ikerd, RN – Bureau of Senior Services (BoSS)  
\_\_\_\_\_, RN – West Virginia Medical Institute (WVMI)\*

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

\* Participated by conference call.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is: Does Ms. \_\_\_\_\_ meet the medical eligibility criteria for the Aged and Disabled Waiver Program?

**V. APPLICABLE POLICY:**

Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services Chapters 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS; 503.1 MEDICAL ELIGIBILITY; 503.1.1 PURPOSE; and 503.2 MEDICAL CRITERIA

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

**Department's Exhibits:**

- D-1 Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services Chapters 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS; 503.1 MEDICAL ELIGIBILITY; 503.1.1 PURPOSE; and 503.2 MEDICAL CRITERIA
- D-2 Pre-Admission Screening (PAS) Form dated 01/18/07
- D-3 Potential Denial Letter dated 01/26/07
- D-4 Denial Letter dated 02/12/07

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) This issue involves the denial of services under the Aged and Disabled Waiver Services Program. The assessment was completed on January 18, 2007. Those present during the assessment were the Claimant; her Mother; a Cousin; and the WVMI RN (Exhibit D-2).
- 2) The WVMI RN determined through her evaluation that the Claimant only had four (4) of the five required deficits for Waiver Services. The deficits were in the areas of:

Eating; Bathing; Dressing; and Grooming. It should be noted that the evaluation was based only on the Claimant's functional levels on the day of the visit.

- 3) The WVMI issued a Potential Denial Letter on January 26, 2007 (Exhibit D-3). The Claimant was permitted to submit additional medical documentation within two (2) weeks of the letter.
- 4) The Claimant did not submit additional medical documentation to WVMI in a timely manner. The information from the physician was received after the two week deadline and not considered by WVMI.
- 5) A Denial Letter was issued to the Claimant on February 12, 2007. The letter stated in part, "An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program."
- 6) At the hearing, the BoSS RN explained the policy (Exhibit D-1). There were no questions from the participants.
- 7) The area of disagreement between the parties was the Claimant's abilities under Question #25 to Vacate the building in case of an emergency, and Bladder Incontinence.
- 8) The Case Manager testified that the Claimant is occasionally disoriented and has a slow and unsteady gait in case of an emergency.
- 9) The WVMI RN testified that the Claimant was able to ambulate without an assistive device at the time of the assessment. In addition, she did not remember any objections from those present during the assessment. The WVMI RN referred to her written comments regarding Walking. It stated, "Observed ambulate unassisted, gait slow, slightly unsteady, says (Claimant) "It will be a cold day before I use a walker, people help me get from place to place."
- 10) The Claimant testified that things happen differently daily due to the nature and degree of her Multiple Sclerosis.
- 11) The Claimant does not qualify for an additional deficit for vacating the building in case of an emergency.
- 12) The Case Manager testified that the Claimant is Bladder Incontinent and must take a change of clothes when she leaves home.
- 13) The Claimant testified that she is Bladder Incontinent about every other day.
- 14) The Policy under 503.2 MEDICAL CRITERIA states an Individual must be a Level 3 or higher to be incontinent to receive a deficit.
- 15) The Claimant does not meet the definition of Bladder Incontinence to receive a deficit in this area.

**16) 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS (Exhibit D-1):**

Applicants for the ADW 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 Social Security Administration (SSA) if an active SSI (Supplemental Security Income) recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

**17) 503.1 MEDICAL ELIGIBILITY (Exhibit D-1):**

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

**18) 503.1.1 PURPOSE (Exhibit D-1):**

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 service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

**19) 503.2 MEDICAL CRITERIA (Exhibit D-1):**

An individual must have five (5) 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.

<u>Section</u>	<u>Description of Deficits</u>
#24	Decubitus; Stage 3 or 4

- #25 In the event of an emergency, the individual is c) mentally unable 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
- a. Eating Level 2 or higher (physical assistance to get nourishment, not preparation)
  - b. Bathing Level 2 or higher (physical assistance or more)
  - c. Dressing Level 2 or higher (physical assistance or more)
  - d. Grooming Level 2 or higher (physical assistance or more)
  - e. Contenance, bowel Level 3 or higher; must be incontinent.
  - f. Contenance, 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 assistance in the home)
  - i. Walking Level 3 or higher (one-person assistance 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: (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.
- #28 Individual is not capable of administering his/her own medications.

### **VIII. CONCLUSIONS OF LAW:**

- 1) The January 18, 2007 PAS was based on the Claimant's functional levels on the day of the WVM RN's visit.
- 2) An individual must have five (5) deficits on the Pre-Admission Screening Form (PAS), to qualify medically for the ADW Program.
- 3) The Claimant has a total of four (4) deficits in the areas of: Eating; Bathing; Dressing; and Grooming.
- 4) The testimony and medical documentation does not support additional deficits in the area of Vacating the building and Bladder Incontinence.
- 5) The Claimant does not qualify medically for services under the ADW Program.

### **IX. DECISION:**

It is the decision of this State Hearing Officer to uphold the action of the Department to deny the Claimant's application for Aged and Disabled Waiver Services.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 25th Day of April, 2007.**

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**Ray B. Woods, Jr., M.L.S.**  
**State Hearing Officer**