



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

Board of Review  
PO Box 29  
Grafton WV 26354  
July 5, 2007

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

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing convened May 23, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits/services under the Medicaid, Aged/Disabled Title XIX (Home & Community Based) Waiver 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.

Medicaid, Aged/Disabled (HCB) Title XIX Waiver is granted to those individuals who continue to meet all eligibility requirements. 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. In order to medically qualify for Aged/Disabled Waiver services an individual must have a total of five (5) qualifying deficits in specific categories of nursing services. [Aged/Disabled (HCB) Services Manual § 503].

The information submitted at your hearing failed to establish a minimum of 5 qualifying deficits, demonstrating that you do not require the *level of care* commonly provided in a nursing facility.

It is the decision of the State Hearing Officer to **uphold** the action of the agency to deny your application for benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the February 26, 2007 notification.

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Libby Boggess, BoSS  
[REDACTED] WVMI

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

\_\_\_\_\_  
Claimant,

v.

**Action Number 07-BOR- 974**

**West Virginia Department of Health and Human Resources,  
Respondent.**

**SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 5, 2007 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 23, 2007 on a timely appeal requested March 16, 2007 and received by the State Hearings Examiner April 10, 2007.

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid Title XIX Waiver (HCB) 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

\_\_\_\_\_, claimant daughter

\_\_\_\_\_, homemaker

\_\_\_\_\_, RN, Select In-Home Services

Kay Ikerd, RN, Bureau of Senior Services (by phone)

\_\_\_\_\_, RN, West Virginia Medical Institute (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

### IV. QUESTION TO BE DECIDED:

The question to be decided is whether the claimant was medically eligible for services under the Aged/Disabled Waiver (HCB) Program.

### V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual §503- 503.4

### VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

D-1- A/D Waiver Manual §503- 503.4.

D-2- WVMi Independent Review (PAS), 2/1/07

D-3- Notification, 2/9/07 (Potential Denial)

D-4- Notification, 2/26/07 (Termination/Denial)

C-1- Statement, Dr. \_\_\_\_\_, 5/23/07

C-2- Statement, Dr. \_\_\_\_\_, 5/22/07

### VII. FINDINGS OF FACT:

1) The claimant's A/D Waiver application was referred to the agency November 29, 2006 and a WVMi Independent Review (D-2) was completed by the WVMi on February 1, 2007.

2) WVMi determined that the claimant was not medically eligible for Waiver services and a notification of potential denial was mailed by the agency February 9, 2007.

3) The agency mailed a final notification of denial to the claimant February 26, 2007.

4) A hearing request dated March 15, 2007 was received by the Bureau for Medical Services (BMS) March 16, 2007 and by this examiner April 10, 2007.

5) During the hearing, Exhibits as noted in Section VI above were accepted. Exhibits C-1 and 2 were Faxed to the agency at the conclusion of the hearing.

6) Testimony was heard from the parties listed in section III above. All persons giving testimony were placed under oath.

7) On the basis of the medical evaluation completed February 1, 2007 and the testimony of the WVMIRN who completed the assessment, 2 qualifying deficits were acknowledged- grooming and continence.

8) The agency's findings were challenged on behalf of the claimant in the areas of medication, vacating, bathing, transferring and walking. Sworn testimony offered principally by the claimant's daughter reveals that the claimant suffers a deteriorating muscular condition. Sometimes has difficulty climbing stairs and has fallen. She walks with him in the home and he must rock to stand from a chair. She doesn't feel he could vacate quickly in an emergency based on his mobility limitations and hearing deficit. To get around, he uses a cane inside the home and a scooter (rascal) to get around when out. He is able to transfer on and off the commode and the "rascal" by himself. Daughter stands behind him when he goes upstairs. He is alone during the day. When he is ill, he requires some help with bathing but not routinely. She handles all of his meds- determines dosages etc as he is unable to set up or determine dosages- he takes what is given. He can dress himself unless there are a lot of buttons and he has some difficulty on "bad" days.

9) The Aged/Disabled Home and Community Based Services Manual § 503 and 503.4 direct that applicants and recipients for the ADW program must meet all criteria to be eligible for the program including medical and financial criteria. Additionally, annual reevaluations for medical necessity for each ADW recipient must be conducted.

10) The Aged/Disabled Home and Community Based Services Manual § 503 reveals that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care.

11) The Aged/Disabled Home and Community Based Services Manual § 503.2 Medical Criteria directs that an individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of assessment elements on the medical evaluation- **Decubitus** - Stage 3 or 4; **Ability to vacate a building**- in the event of an emergency, the individual is mentally or physically unable to vacate a building. (Independently or "with supervision" are not considered deficits.); Functional abilities of individual in the home – **Eating** (physical assistance to get nourishment, not preparation) **Bathing, Grooming, Dressing** -all Level 2 or higher (physical assistance or more), **Continence** - Level 3 or higher- must be total incontinent;

**Orientation** (totally disoriented, comatose), **Transferring**- level 3 or higher (one or two-person assistance in home), **Walking**- Level 3 or higher (one-person assistance in 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) ; **Skilled needs**- in at least one of the following- suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, irrigations; **Ability to self-medicate**- individual is not capable of administering his/her own medication.

## VIII CONCLUSIONS OF LAW:

1) Policy relating to the Aged/Disabled Home and Community Based Services program directs that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care. Eligibility is determined based on an assessment of the individual's functional ability in a number of designated elements pertaining to the activities of daily living. Evidence reveals that such an evaluation was completed by the West Virginia Medical Institute on February 1, 2007. This evaluation found 2 qualifying deficits in the categories of **continence** and **grooming**.

2) Deficits are derived from a combination of the aforementioned assessment elements (VII #11). The claimant contested the agency's findings of no qualifying deficit in 5 functional areas: medication, vacating, bathing, transferring and walking.

3) In order to determine a qualifying deficit in the category of **Bathing** it must be shown that the individual requires at a minimum "physical assistance" or hands on assistance to provide adequate hygiene. Testimony revealed that the claimant routinely bathes himself but occasionally requires what appears to be supervision when ill. It appears that the need for assistance in this category is minimal and assignment of a qualifying deficit is inappropriate.

4) In order to determine a qualifying deficit in the category of **Dressing** it must be shown that the individual requires at a minimum "physical assistance" or hands on assistance to appropriately dress. Testimony reveals that the claimant usually dresses himself but for occasional assistance with buttons. A qualifying deficit cannot be established based on the minimal nature of the occasional help required.

5) In order to determine a qualifying deficit in the category of **Ability to vacate a building**, it must be shown that in the event of an emergency, the individual is mentally or physically unable to vacate a building. Testimony indicates that the claimant is slow in mobility and transferring. These factors when combined with his hearing loss would seem to make his ability to vacate safely in an emergency questionable. A qualifying deficit is found in this functional area.

6) In order to determine a qualifying deficit in the categories of **Transferring** and/or **Walking**, it must be shown that the individual requires the assistance of at least one person to perform these tasks in home. While testimony indicates that his daughter walks with him in the home and behind him when he goes upstairs, it appears that he routinely uses a cane to ambulate when

indoors. He is alone much of the day and testimony reveals he is able to transfer independently on and off the commode and scooter. Evidence fails to sufficiently establish qualifying deficits in either of these functional areas.

7) In order to determine a qualifying deficit in the category of **Ability to self-medicate**, it must be shown that the individual is not capable of administering his/her own medication. Testimony reveals that the claimant participate in this area is limited to ingesting the medication. To properly administer his medication his daughter must completely set up his meds for him. A qualifying deficit is found in this functional area.

8) Policy provides that an individual must have a minimum of five deficits to qualify medically for the ADW Program. The medical assessment established 2 qualifying deficits. Evidence offered at the hearing provided only 2 additional deficits (ability to vacate and medication administration) for a total of 4. Medical eligibility for the program cannot therefore be established.

#### **IX. DECISION:**

The agency's determination as set forth February 26, 2007 notification is upheld. This hearing established only 4 fully qualifying deficits, failing to establish medical eligibility for the ADW program.

#### **X. RIGHT OF APPEAL:**

See Attachment.

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 5<sup>th</sup> Day of July 2007.**

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**Ron Anglin**  
**State Hearing Examiner**

**CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION**  
**For**  
**Public Assistance Hearings,**  
**Administrative Disqualification Hearings, and**  
**Child Support Enforcement Hearings**

**A. CIRCUIT COURT**

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

**B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of health and Human Services, Washington, D.C. 20201.

**C. THE UNITED STATE DEPARTMENT OF AGRICULTURE**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.