



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

February 17, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 26, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of benefits under the Medicaid Aged and 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 require that ADW services are 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. An individual must have five (5) deficits on the Pre-Admission Screening (PAS) form to qualify medically.

The information submitted at your hearing revealed that the Department was correct to identify three (3) deficits and to deny medical eligibility for the ADW program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny benefits under the Aged and Disabled Waiver Program.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Kay Ikerd, BoSS  
Kim Sang, RN, WVMI

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

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**Claimant,**

v.

**Action Number: 08-BOR-1569**

**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 17, 2009 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 November 26, 2008 on a timely appeal, filed June 17, 2008.

All persons offering testimony were placed under oath.

**II. PROGRAM PURPOSE:**

The program entitled Aged and 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  
-----, Claimant's witness  
-----, Claimant's witness  
Kim Sang, RN, WVMi\*  
Kay Ikerd, Department Representative, BoSS\*

\*Participated by speakerphone.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Department was correct in its action to deny the Claimant benefits under the Aged and Disabled Waiver Program.

**V. APPLICABLE POLICY:**

§ Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §503, §503.2

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

**Department's Exhibits:**

- D-1 Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §503, §503.2
- D-2 Pre-Admission Screening (PAS) form, dated May 19, 2008
- D-3 Notice of Potential Denial, dated May 20, 2008; letter from Dr. [REDACTED] dated May 28, 2008
- D-4 Notice of Denial dated June 5, 2008

**VII. FINDINGS OF FACT:**

- 1) Claimant is a seventy-one (71) year old female applicant for Aged and Disabled Waiver Services. Kim Sang, RN, completed a Pre-Admission Screening (PAS) of the Claimant to determine her medical eligibility for the program on May 19, 2008 (Exhibit D-2).
- 2) The Department issued a letter advising the Claimant of potential denial for the program (Exhibit D-3) on May 20, 2008, and a June 5, 2008 denial notice (Exhibit D-4). After the potential denial notice was sent, the Department received a letter from Dr. [REDACTED] [REDACTED] (Exhibit D-3); Department testimony confirmed that this letter resulted in no change to their assessment of the Claimant, so the June 5, 2008 denial notice was issued. This denial notice (Exhibit D-4) stated that eligibility for the program requires

deficits in five (5) listed areas, and that the Claimant’s PAS indicated deficits in three (3) of the listed areas, specifically *Bathing*, *Grooming*, and the ability to *Vacate a Building*. The notice explained that because this is less than the required five (5) deficits, the Claimant’s Aged and Disabled Waiver services are denied.

- 3) The Claimant and her witnesses introduced issues in the areas of *Transferring*, *Continence of Bladder* and *Continence of Bowel*.
- 4) Policy from the Aged and Disabled Home and Community-Based Services Waiver Policy Manual 503.2 (Exhibit D-1) states:

**503.2 MEDICAL CRITERIA**

An individual must have five (5) deficits on the Pre-Admission Screening Form (PAS), Attachment 14, to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

<b>Section</b>	<b>Description of Deficits</b>	
#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.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
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 for 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.

All of the above medical criteria information also applies to Personal Options.

- 5) With regard to the area of *Transferring*, the WVMI nurse testified that she witnessed the Claimant transfer multiple times during the May 25, 2008 assessment. She testified that the Claimant can get in and out of bed by herself, or uses a walker to get out of bed when she has back problems. The Claimant testified that she needed help when she has back problems. The WVMI nurse testified that the use of a walker - or holding onto walls and furniture while a person walks – is the use of an assisted device, and that for a deficit to be awarded in this area the Claimant must have required one-person assistance at the time of the assessment.
- 6) With regard to *Continence of Bladder*, testimony from the WVMI nurse revealed that at the time of the assessment the Claimant reported to her that she had stress incontinence of bladder, but only occasional full-fledged incontinence. The Claimant testified that she had no control of her bladder at the time of the assessment. The PAS (Exhibit D-2) documented that the Claimant reported using eighty (80) diapers per month, but that she was using them “...like pads in her underwear,” and that she did this because “...they are cheaper for her to use.” The Claimant described this, in testimony, as “leaking,” and the WVMI nurse testified that stress incontinence is not the same as full-fledged incontinence.
- 7) With regard to *Continence of Bowel*, testimony from the Claimant revealed that coughing could trigger an accident, that she did not know the cause of her diarrhea, and that she did not know how often she had accidents at the time of the assessment. The Department noted that at the time of the PAS (Exhibit D-2), the Claimant was noted as occasionally incontinent, and that no deficit is awarded for this degree of incontinence.
- 8) Witnesses for the Claimant reiterated her need for a walker, her problems with her back and breathing, and for her need for help with housekeeping. The Department testified that the Aged and Disabled Waiver Program does not help with housekeeping, and noted that the other areas were reflected in the May 19, 2008 PAS (Exhibit D-2).

## VIII. CONCLUSIONS OF LAW:

- 1) The Aged and Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged and Disabled Waiver program. The WVMI nurse determined, at the time of the PAS, that the Claimant had only three (3) qualifying deficits in the areas of *Bathing*, *Grooming*, and the ability to *Vacate a Building*.
- 2) Evidence and testimony for this hearing revealed no additional qualifying deficits. The testimony regarding *Transferring* confirmed the Claimant’s need for an assisted device,

but did not support the need for a one-person assist. The WVMI nurse witnessed the Claimant transferring on the day of her assessment. The testimony regarding *Continence of Bladder* and *Continence of Bowel* indicated that, at the time of the PAS, the Claimant's accidents were documented as occasional and described as "stress incontinence." The Claimant did not provide any testimony regarding the frequency of her accidents that would contradict what was documented by the Department at the time of the assessment.

- 3) With a total of only three (3) deficits, the Department was correct to deny the Claimant Aged and Disabled Waiver Services based on the failure to meet medical eligibility.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of February, 2009.**

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**Todd Thornton  
State Hearing Officer**