



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

March 18, 2009

-----, Esq.

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**RE: -----**

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 11, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of medical eligibility for the Medicaid Aged and Disabled Waiver (ADW) Program for -----.

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. Regulations require that ADW services be granted to those individuals who have met 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 four (4) 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  
Traci Gillispie, RN, WVM

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

-----,

**Claimant,**

v.

**Action Number: 08-BOR-1906**

**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 March 18, 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 March 11, 2009 on a timely appeal, filed August 12, 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  
-----, Esq., Counsel for the Claimant, Legal Aid of West Virginia  
-----, Legal Aid of West Virginia  
-----, RN, Southwestern Community Action Council  
-----, Esq., Assistant Attorney General\*  
Traci Gillispie, RN, WVMI\*  
Kay Ikerd, RN, 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 medical eligibility for the Medicaid Aged and Disabled Waiver Program to the Claimant.

### **V. APPLICABLE POLICY:**

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2

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

#### **Department's Exhibits:**

- D-1 Policy Manual §501.3.2 – Medical Criteria
- D-2 Pre-Admission Screening (PAS) form, dated July 22, 2008
- D-3 Notice of Termination dated August 6, 2008
- D-4 Additional medical information
- D-5 Policy Manual Attachment 14 – Pre-Admission Screening (PAS) form

### **VII. FINDINGS OF FACT:**

- 1) Claimant is a forty-eight (48) year old female recipient of Medicaid Aged and Disabled Waiver (ADW) Services. Traci Gillispie, RN, completed a Pre-Admission Screening (PAS) of the Claimant to reevaluate her medical eligibility for the program on July 18, 2008 (Exhibit D-2). The Department issued the Claimant a notice of terminated benefits on or about August 6, 2008 (Exhibit D-3). The notice advised the Claimant that deficits were only awarded in four (4) health areas, and that a minimum of five (5) deficits are required for medical eligibility. Deficits were awarded in the areas of *Eating, Bathing, Grooming, and Dressing*.
  
- 2) The Claimant and her witnesses introduced issues in the areas of *Walking and Continence*.
  
- 3) Policy from the Aged and Disabled Home and Community-Based Services Waiver Policy Manual §501.3.2 (Exhibit D-1) states:

**501.3.2 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.

- 4) With regard to the area of *Walking*, the WVMI nurse testified that she witnessed the Claimant walking independently multiple times during the July 18, 2008 assessment. She testified that the Claimant did not hold onto the furniture or walls for support, and that she did not use either of her canes, except outside the home.
  
- 5) With regard to *Continence*, testimony from the WVMI nurse revealed that at the time of the assessment the Claimant reported to her that she had incontinence of bladder less than once a month. During the hearing, the Claimant testified that bladder incontinence was daily, when she coughs. The frequency of incontinence of bowel was reported by the Claimant at the time of the PAS as twice a week. During the hearing, the Claimant testified that bowel incontinence was four to five times a week. Upon cross-examination, the WVMI nurse testified that she based her opinion of the Claimant's degree of incontinence solely on the Claimant's statement, and not on the opinions of her doctor or other persons familiar with the Claimant.
  
- 6) Kay Ikerd, RN for the Department, testified that the Department defined Level 2 "occasional incontinence" as less than three accidents per week, and Level 3 "incontinence" as three or more accidents per week. ----, RN for the Claimant, also testified that her understanding of the definition of incontinence required a threshold of "three to five" accidents per week. ---- also testified that she believed the Claimant to be incontinent, but upon cross-examination, it was revealed that this opinion was not based on her direct observation.

### 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 four (4) qualifying deficits in the areas of *Eating, Bathing, Dressing, and Grooming*.

- 2) Evidence and testimony for this hearing revealed no additional qualifying deficits. The testimony regarding *Walking* confirmed that the Claimant could ambulate independently at the time of the PAS. The WVMi nurse witnessed this multiple times during her assessment. The Claimant's testimony regarding *Continence* is unclear with regard to time. Testimony of secondhand observations was disregarded. The Department documented the frequency of the Claimant's incontinence at the time of the assessment, and the WVMi nurse reviewed her findings with the Claimant at that time. 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 only four (4) deficits, the Department was correct to deny the Claimant Medicaid 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 Medicaid 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 March, 2009.**

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**Todd Thornton**  
**State Hearing Officer**