



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

June 30, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 29, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the Aged/Disabled (HCB) Title XIX Waiver Services 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 Aged/Disabled Waiver 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 a 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 Section 501]

Information submitted at your hearing reveals that you continue to meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

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

-----,

**Claimant,**

v.

**Action Number: 11-BOR-1121**

**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 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 June 29, 2011 on an appeal filed April 21, 2011 and received by the Hearing Officer on May 17, 2011.

It should be noted that the Claimant's benefits have been continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

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  
-----, Social Worker/Case Manager, Randolph County Commission on Aging  
-----, Homemaker, [REDACTED]  
-----, RN, [REDACTED]  
-----, RN, [REDACTED]  
Kay Ikerd, RN, Bureau of Senior Services  
Carrie Naughton, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, 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 Agency was correct in its proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 501.3, 501.3.1, 501.3.1.1, 501.3.2 and 501.3.2.1

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) completed on March 1, 2011
- D-3 Notice of Potential Denial dated March 25, 2011
- D-4 Denial Notice dated April 15, 2011

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical evaluation to determine if he continues to meet medical eligibility criteria for the program.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Carrie Naughton completed a Pre-Admission Screening (PAS) medical assessment on March 1, 2011 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits two (2) qualifying deficits in the areas of *physical assistance with bathing and grooming*.

- 3) The Claimant was sent a Notice of Potential Denial on March 25, 2011 (D-3) and was advised that he had two weeks to submit additional medical information for consideration.
- 4) The Claimant was sent a final Denial Notice on April 15, 2011 (D-4).
- 5) The Claimant and his representatives contended that he should receive additional deficits in the following areas:

***Physical assistance with eating-*** -----, Social Worker/Case Manager with the [REDACTED] testified that the Claimant - whose diagnoses include neuropathy, spinal stenosis and Gullain-Barre Syndrome - has difficulty getting food to his mouth due to tremors. She stated that the Claimant could not butter toast or remove the paper from a slice of cheese.

PAS notes indicate that the Claimant reported being able to feed himself, but stated that he had not cut up food for some time and was unsure that he could cut food because finger numbness affects his manual dexterity.

The WVMi Nurse agreed that the Claimant could not likely have cut up food at the time of the assessment due to the jerky movements of his hands.

*Based on information provided during the hearing, one (1) additional deficit is awarded to the Claimant for physical assistance with eating.*

***Physical assistance with dressing-*** -----testified that the Claimant has basically “given up” on the type of clothing he wears, and wears slip-on clothing and shoes due to his physical limitations. -----contended, however, that slip-on shoes are sometimes dangerous to wear outdoors and that he needs to wear shoes with better support. He would not be able to pull up boots.

The WVMi Nurse testified that the Claimant told her he wore slip-on clothes and shoes during the assessment, as neuropathy makes it difficult to manage buttons, zippers and snaps. The WVMi Nurse indicated that the Claimant had limited care provider assistance at that time. She agreed that if the Claimant wanted to wear other types of clothing he would need assistance with dressing, and this information was not challenged by the Department.

*Based on information provided during the hearing, one (1) additional deficit is awarded for physical assistance with dressing.*

***Inability to transfer in the event of an emergency-*** -----, Registered Nurse with the [REDACTED] testified that the Claimant would have difficulty exiting his residence unassisted if an emergency situation occurred at night.

The WVMi Nurse testified that the Claimant indicated he would be able to vacate in the event of an emergency as he keeps his Rolator walker beside the door. -----maintained that

the Claimant may be unable to reach the walker should an emergency occur at night due to his mobility problems. -----stated that she witnessed the Claimant's jerky movements, but he had indicated that he is sometimes able to walk to locations in close proximity to his residence. However, she agreed that the Claimant may encounter problems exiting the residence in an emergency situation as he could fall.

*One (1) additional deficit is awarded to the Claimant for inability to vacate the building in the event of an emergency. Based on the Claimant's mobility problems, it is plausible that he would be unable to get to his walker unassisted if he was awakened in the middle of the night in an emergent situation.*

**Physical assistance with transferring and walking-** -----testified that the Claimant has difficulty transferring out of bed in the morning.

The WVM Nurse testified that the Claimant transferred/walked with assistive devices during the PAS. He reported that he uses assistive devices, including walls, furniture, a cane and walker, and no information was provided during the assessment regarding the need for hands-on assistance.

*No deficits are awarded for physical assistance with transferring/walking as the Claimant transferred and ambulated unassisted during the assessment.*

6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1)- Program Eligibility for Client:

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.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 (D-1) – Purpose: The purpose of the medical eligibility review is to ensure the following:

A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

B. Each applicant/client determined to be medically eligible for A/DW 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.

8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 (D-1): An individual must have five (5) deficits on the Pre Admission Screening (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 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

Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)

Bathing ----- Level 2 or higher (physical assistance or more)

Dressing ---- Level 2 or higher (physical assistance or more)

Grooming--- Level 2 or higher (physical assistance or more)

Continence (bowel, bladder) -- Level 3 or higher; must be incontinent

Orientation-- Level 3 or higher (totally disoriented, comatose)

Transfer----- Level 3 or higher (one-person or two-person assistance in the home)

Walking----- Level 3 or higher (one-person assistance in the 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)

#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 Individual is not capable of administering his/her own medications.

### VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. The Claimant was awarded two (2) deficits on his March 2011 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, three (3) additional deficits are awarded for *physical assistance with eating and dressing, and inability to vacate in the event of an emergency.*
- 3) The Claimant's total number of deficits is elevated to five (5), rendering him medically eligible for continued participation in the Aged/Disabled Waiver Program.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's benefits under the Aged/Disabled, Title XIX (HCB) Waiver Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 30th Day of June, 2011.**

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**Pamela L. Hinzman  
State Hearing Officer**