



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

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

June 27, 2008

c/o \_\_\_\_\_  
\_\_\_\_\_

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 26, 2008. 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 503]

Information submitted at your hearing reveals that you 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  
BoSS  
WVMI  
CWVAS

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

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**Claimant,**

v.

**Action Number: 08-BOR-1006**

**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 June 27, 2008 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 26, 2008 on a timely appeal filed March 10, 2008 and received by the Hearing Officer on April 11, 2008. The hearing was originally scheduled for May 16, 2008, but was rescheduled at the request of the Department. The hearing was then scheduled for May 28, 2008, but was rescheduled at the request of the Claimant.

**II. PROGRAM PURPOSE:**

The program entitled Aged/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  
\_\_\_\_\_, Case Manager, Central West Virginia Aging Services (CWVAS)  
[REDACTED] RN, [REDACTED] County Senior Center  
\_\_\_\_\_, Homemaker, [REDACTED] County Senior Center

#### **Telephonic participants**

Kay Ikerd, RN, Bureau of Senior Services  
Betsy Carpenter, 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. QUESTIONS TO BE DECIDED:**

The question(s) 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 503, 503.1, 503.1.1 and 503.2

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

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

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 503
- D-2 Pre-Admission Screening (PAS) completed on February 12, 2008
- D-3 Denial notice dated March 4, 2008
- D-4 Notice of Potential Denial dated February 14, 2008 and additional medical information

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

- 1) The Claimant was a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical reevaluation to determine if she continues to meet medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on February 12, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified four (4) qualifying deficits for the Claimant in the areas of physical assistance with bathing and grooming, inability to vacate the building in the event of an emergency, and incontinence of bowel/bladder.

- 3) The Claimant was sent a Notice of Potential Denial on February 14, 2008 (D-4) and was advised that she had two weeks to submit additional medical information for consideration. Additional information was submitted, however the documentation failed to change the PAS findings.
- 4) The Claimant was sent a final denial notice on March 4, 2008 (D-3).
- 5) During the hearing, the Claimant's witnesses contended that an additional deficit should be awarded in the following area:

***Physical assistance with dressing***- The [REDACTED] County Senior Center Nurse testified that the Claimant has problems with her shoulder and lacks the range of motion required to pull her shirts around that shoulder. The Claimant's homemaker also testified that she assists the Claimant with putting on shirts due to her shoulder problems and assists her with pulling up pants. The homemaker testified that she visits the Claimant's residence during non-work hours in the evening to help the Claimant dress for bed. Additional information submitted by the Claimant in response to the Notice of Potential Denial (D-4) includes a written statement from Dr. [REDACTED] which indicates that the Claimant requires assistance with dressing. The Claimant reported during the hearing that she did not understand some of the information requested at the assessment and stated she would be unable to dress without assistance from her homemaker. The Claimant indicated that she pulls up her pants when she gets off the commode by using her walker for support when no one else is present in her home.

The WVMI Nurse testified that the Claimant denied requiring assistance to dress on the date of the assessment. The Claimant had reported she could put on her socks and shoes, and could button, snap and zip her own clothes. The Claimant also reported that she could put on her night clothes independently. The nurse noted no deficits in the Claimant's range of motion. The nurse testified that she did not change her assessment based on Dr. [REDACTED] statement because the documentation did not provide specific information about the Claimant's need for assistance with dressing. The nurse also stated the homemaker did not report that the Claimant needed assistance with dressing during the assessment. The homemaker indicated she had stated that the Claimant can participate in her dressing to an extent, but that she has assisted the Claimant with this activity for some time.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 503 (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 503.1.1 (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 503.2 (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 four (4) deficits on her February 2008 Aged/Disabled Waiver Program medical reevaluation.
- 2) As a result of information provided during the hearing, one (1) additional deficit is awarded to the Claimant in the area of physical assistance with dressing. Both the ██████████ County Senior Center Nurse and the homemaker testified that the Claimant has shoulder problems and is unable to pull her shirts around her shoulder. The Claimant stated that- when alone in the household- she pulls up her pants by stabilizing herself with a walker during toileting, however the homemaker reported that she assists the Claimant with putting on pants when she is present because the Claimant has difficulty with this activity. The Claimant's physician also noted a need for assistance with dressing (although he did not provide information concerning the Claimant's specific deficiencies in this area).
- 3) The required deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

## **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The additional deficit awarded by the Hearing Officer should be considered when determining the Claimant's Level of Care.

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

See Attachment

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 27th Day of June, 2008.**

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**Pamela L. Hinzman  
State Hearing Officer**