



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 21, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 1, 2008. Your hearing request was based on the Department of Health and Human Resources' proposed termination of services under the Aged 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 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 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 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the February 7, 2008 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the action of the Department to terminate services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Oretta Keeney, WVMI
[REDACTED] Lifetime Management Services

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

_____,
Claimant,

v. **Action Number: 08-BOR-1230**

**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 July 1, 2008 for _____ on a timely appeal filed April 15, 2008. 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.

The claimant's benefits have been continued through this hearing process.

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's Witnesses:

_____, Claimant
_____, Case Manager, Lifetime Management Services
_____, Homemaker, Helping Hands

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services
Betsy Carpenter, WVMi Nurse

All participants appeared by speakerphone

Presiding at the Hearing was Sharon K. Yoho, 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 Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §500, Attachment 14

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community based Services Manual §503 thru 503.4
- D-2 Pre-Admission Screening, PAS, completed March 19, 2008
- D-3 Eligibility Determination dated March 19, 2008
- D-4 Notice of potential denial dated March 20, 2008
- D-5 Notice of denial dated April 9, 2008
- D-6 Doctor note dated March 24, 2008

VII. FINDINGS OF FACT:

- 1) This claimant is a 56-year-old female whose Aged Disabled waiver case was undergoing a re-evaluation in March 2008. She has primary diagnoses of Asthma, Hypothyroidism, Hypertension, and Arthritis
- 2) A WV Medical Institute (WVMi) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on March 19, 2008 with only the claimant and herself present. The nurse determined from observation and the answers given to her at the assessment that only four qualifying deficit could be awarded. Those qualifying deficits were in the areas of bathing, dressing, grooming and vacating.

- 3) The claimant and her witnesses introduced issues in the areas of eating and bladder incontinence.
- 4) The claimant advised the nurse at the assessment that she was able to feed herself and that she mostly ate sandwiches and could prepare some of her foods. She reported that she could cut her own food and open cans of soup. At the hearing, the claimant testified that her homemaker cuts her meats. She did not indicate that she could not cut her own meats, only that the homemaker does that for her.
- 5) The claimant told the evaluating nurse, during the assessment, that she had accidents with her bladder. She reported that her last accident had been the day before. She advised the nurse that she keeps a pad on her chair and on her bed. The nurse noted that the claimant told her that her previous urine accident prior to yesterday had been the previous week on Thursday. The assessment was being completed on Thursday. The nurse assessed the claimant as only being occasionally incontinent of bladder. The claimant testified that she has daily bladder incontinence and that she was referring to bowel incontinence when she reported the accident of the previous Thursday.
- 6) The case management agency provided a statement from the claimant's doctor to the Department within the time frame permitted for additional documentation. This statement said, "Pt still incontinent & has carpal tunnel syndrome, Needs help in cutting up meat & preparing meals." The Department did not adjust their decision after reviewing this statement.
- 7) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS
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.
- 8) Aged Disabled Home and Community-Based Services Manual Section 503.1: MEDICAL ELIGIBILITY
A QIO under contract to BMS determines medical eligibility for the ADW Program.
- 9) Aged Disabled Home and Community-Based Services Manual Section 503.1.1 PURPOSE:
The purpose of the medical eligibility review is to ensure the following:
 - A. New applicants and existing members are medically eligible based on current and accurate evaluations.
 - B. Each applicant/member determined to be medically eligible for ADW 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.

**10) Aged Disabled Home and Community-Based Services Manual Section 503.2
MEDICAL CRITERIA:**

An individual must have five deficits on the Pre-Admission Screening Form (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 to vacate 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. (Item 25 on the PAS 2005).

- a. Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- b. Bathing ----- Level 2 or higher (physical assistance or more)
- c. Grooming--- Level 2 or higher (physical assistance or more)
- d. Dressing ---- Level 2 or higher (physical assistance or more)
- e. Continence-- Level 3 or higher; must be incontinent
bowel
- f. Continence-- Level 3 or higher; must be incontinent
bladder
- g. Orientation-- Level 3 or higher (totally disoriented, comatose)
- h. Transfer----- Level 3 or higher (one person or two person assist in the home)
- i. Walking----- Level 3 or higher (one person assist 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 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 The individual is not capable of administering his/her own medications.

11) Aged Disabled Home and Community-Based Services Manual Section 503.4

MEDICAL REEVALUATION:

Annual reevaluations for medical necessity for each ADW member must be conducted.

12) Attachment 14, Pre-Admission Screening, PAS

26. Indicate individual's functional ability in the home for each item with the level number 1,2,3,4, or 5.

	Level 1	Level 2	Level 3	Level 4
e. - Cont./Bladder	continent	Occas. Incontinent (less than 3 per wk.)	Incontinent	Catheter

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMi nurse, determined that the claimant had only four qualifying deficits in the areas of bathing, dressing, grooming and vacating.
- 2) Evidence and testimony provided for this hearing did not support that an additional deficit should not have been assessed in the area of eating. Although the claimant may have the homemaker cut her meats, evidence and testimony did not support that the claimant cannot cut her own meats. She advised the nurse that she could cut her own food and had the strength to open cans.
- 3) The claimant did advise the nurse that she has bladder incontinence and that she keeps a pad on her chair and on her bed. She advised that she had been incontinent of bladder the previous day. When the nurse asked her when her previous episode was, she told the nurse that her last episode had been the previous Thursday which had been one week ago. The claimant testified that when she told the nurse of the episode the previous Thursday, she thought the nurse was asking her about bowel incontinence. She testified that she has daily incontinence of bladder. The statement from the Doctor reinforces the claimant's report of daily incontinence.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was incorrect in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **reverse** the Department's action to terminate this claimant's services under the Aged Disabled Title XIX (HCB) Waiver program. I further rule that the Department assess a deficit for bladder incontinence with the associated points in determining the level of care.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of July 2008.

**Sharon K. Yoho
State Hearing Officer**