



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 970  
Danville, WV 25053

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

August 8, 2008

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\_\_\_\_\_  
\_\_\_\_\_

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 30, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of your medical eligibility 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 do meet the 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 deny your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS

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

\_\_\_\_\_ ,

**Claimant,**

v.

**Action Number: 08-BOR-1407**

**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 30, 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 July 30, 2008 on a timely appeal filed May 19, 2008.

**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  
\_\_\_\_\_, Claimant's mother

Kay Ikerd, BOSS - participated telephonically  
Michelle Wiley, WVMI, participated telephonically

Presiding at the hearing was Cheryl Henson, State Hearing Officer and 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 deny 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) assessment completed on February 13, 2008
- D-3 Notice of Potential Denial dated February 21, 2008
- D-4 Notice of Denial dated March 10, 2008

**Claimant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) The Claimant was undergoing an initial evaluation for the Title XIX Aged and Disabled Waiver Program during the month of February 2008.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on February 13, 2008 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified the Claimant received one (1) deficit on the Pre-Admission Screening (PAS) assessment in the area of dressing. The nurse documented that the Claimant has Cerebral Palsy. The Claimant's mother indicated during the assessment that she gets confused at times, is combative at times, and is unable to understand simple commands at times because she needs someone to "sign". She can write out what she needs, but does confuse her words at times. The Claimant has had three (3) total surgeries on her legs, and has also had surgery on her heels and toes. The Claimant has difficulty in both understanding and communicating.

- 3) The Claimant was sent a Notice of Potential Denial on February 21, 2008 (D-3) and was advised that she had two weeks to submit additional medical information for consideration by WVMi. No additional documentation was submitted by the Claimant.
- 4) The Department sent the Claimant a Notice of Denial (D-4) on March 10, 2008. The Claimant requested a hearing on May 19, 2008.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

***Vacating the home:*** The Claimant was rated as needing supervision. The WVMi nurse recorded the following on the PAS:

Her mother says that in the event of an emergency, she may require supervision to vacate the apartment. I asked if she felt that she needed hands on assistance. She says that she feels that supervision would be adequate. She does have a fire alarm in the living room that lights up so that she knows there is a fire. Was assessed as requiring supervision for vacating.

The Claimant's mother testified that her daughter would need hands on assistance to vacate the home in an emergency – especially at night. She states the Claimant gets very drowsy at night due to her medications, and she walks very slowly. She states her daughter does drive some, but tires easily. She also stated that the Claimant's arms tire quickly, so she can only walk a few feet before tiring. The Department contends that because the Claimant is able to leave her apartment occasionally without assistance for short shopping trips she would be able to vacate her home in the event of an emergency without physical assistance. The Claimant's mother contends that there is a difference between a short shopping trip and vacating a home in an emergency. She stated that the Claimant would need to be able to get out in a hurry and could not do this without physical assistance. The WVMi nurse recorded in the "contractures" section of the PAS that the Claimant's mother says she cannot bend her toes or her right ankle, and at time has difficulty bending her knee because of arthritis. The PAS also reflected that when cooking food the Claimant has to sit in a chair as she has difficulty standing, and that she had fallen in the home in the past. During a random fire drill conducted during the hearing, the Claimant was unable to move quickly without physical assistance. The totality of the evidence provided support the finding that the Claimant needs physical assistance with vacating a building in an emergency.

***Grooming:*** which is under Functional Abilities. The Claimant was rated as self/prompting. The WVMi nurse recorded the following on the PAS:

Mother says that she can wash her hair. She can blow dry her hair, as well. She can apply deodorant, as well. She says that she can apply lotion as well. She can brush her teeth, as well.

She trims her nails herself. She says that she does have difficulty with toenails at times. Was assessed as being able to groom independently.

The Claimant's mother testified that the Claimant tries to cut her toenails, but usually requires assistance. She states that she usually cuts her daughters nails. She is able to cut the nails in her left leg, but she can't cut the nails on her right leg. The Claimant also testified with sign language that she cannot cut the nails on her right leg. The Claimant's mother indicated clearly during the assessment that the Claimant has difficulty with cutting her own nails, which should have prompted more discussion. The evidence supports a deficit in the area of grooming.

**Bathing:** which is under Functional Abilities. The Claimant was rated as self/prompting. The WVMI nurse recorded the following on the PAS:

She says that she can get in/out of the shower herself. She was sitting down in the tub and using a hand held sprayer that she uses. Her mother brought her a shower chair that she can no [sic] use. She has a brush to use to wash her back. She says that she can complete all aspects of bathing herself.

The Claimant's mother testified that the Claimant cannot spread her thighs to wash at the top of her legs due to the Cerebral Palsy, and gets frequent infections as a result. Although she tries to do this, she requires hands on assistance to clean this area. She stated that her daughter is embarrassed about this situation and she was reluctant to mention it during the assessment. The Claimant cannot speak words to communicate, and cannot hear. The evidence provided supports that the Claimant needs physical assistance with parts of her bathing.

**Bladder Incontinence:** which is under Functional Abilities. The Claimant was rated as Continent. The WVMI nurse recorded the following on the PAS:

Mother denies that she has bladder and bowel incontinence. She did ask applicant, but she denied having incontinence. Was assessed as having no incontinence.

The Claimant's mother testified that she has bladder incontinence three or more times a week. The medication she takes causes her to go a lot. She doesn't know why she indicated that she didn't have incontinence the day of the PAS. The Claimant testified through sign language that "sometimes it comes on fast, and she has difficulty holding it in order to get to the bathroom". Evidence supports that the Claimant has incontinence of bladder.

- 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 – 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.
- 2) The Claimant received one (1) deficit in February 2008 in conjunction with her Aged/Disabled Waiver Program initial evaluation.
- 3) The totality of the evidence and testimony presented during this hearing support the finding of four (4) additional deficits in the areas of vacating a building, grooming, bathing, and bladder incontinence. The amount of difficulty the Claimant demonstrates in communication was taken into consideration in arriving at this decision. The Claimant clearly has extreme difficulty in her movements. I find the testimony presented on behalf of the Claimant to be credible and reliable.
- 4) The required five (5) 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 Department is instructed to consider the deficits awarded in this hearing in determining level of care.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 8<sup>th</sup> Day of August, 2008**

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**Cheryl Henson  
State Hearing Officer**