



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 31, 2008

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

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 25, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate services through the Aged/Disabled Waiver Program.

In arriving at a decision, the State Hearings 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 Home and Community Based Waiver Services Manual § 503).

The information which was submitted at your hearing revealed that you no longer meet the medical criteria to continue receiving services through the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to terminate your services through the Aged/Disabled Waiver Program.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review  
[REDACTED] Central West Virginia Aging  
Kay Ikerd, Bureau of Senior Services

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

\_\_\_\_\_,  
**Claimant,**

v. **Action Number: 08-BOR-1464**

**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 25, 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 25, 2008 on a timely appeal, filed May 28, 2008.

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

**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 wife  
\_\_\_\_\_ Claimant's son  
\_\_\_\_\_ Homemaker RN, Central West Virginia Aging  
\_\_\_\_\_ Case Manager, Central West Virginia Aging

Kay Ikerd, Bureau of Senior Services (appeared by phone)  
Christine Miller, RN, West Virginia Medical Institute (appeared by phone)

Presiding at the Hearing was Kristi Logan, 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's decision to terminate Claimant's services through the Aged/Disabled Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual § 503 and 503.2

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

**Department's Exhibits:**

- D-1 Aged and Disabled Waiver Services Policy Manual § 503
- D-2 Pre-Admission Screening form dated April 28, 2008
- D-3 Notification Letter dated May 2, 2008

**Claimants' Exhibits:**

- C-1 None

**VII. FINDINGS OF FACT:**

1) Claimant was due for a re-evaluation for the Aged/Disabled Waiver Program and a Pre-Admission Screening (PAS) form was completed on April 28, 2008 by Christine Miller, RN with the West Virginia Medical Institute (WVMI). Present at the assessment was \_\_\_\_\_ Homemaker RN, with Central West Virginia Aging.

2) A termination notification letter dated May 2, 2008 was issued and read in part (D-3):

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in policy. Based on your PAS you have deficiencies in only 2 areas. Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

3) Claimant was awarded deficits in eating and grooming. Three (3) additional deficits were required for Claimant to continue receiving services through the Aged/Disabled Waiver Program.

- 4) Claimant contested not being given a deficit in the area of walking. Claimant testified that he falls 3-4 times a week and needs help getting up after each fall. He has to use a walker for a few days after having a fall because his knee hurts.
- 5) Claimant stated he requires help bathing. He has a tub/shower combination and has to step over the edge of the tub to get into the shower. He falls frequently doing this and needs help getting into and out of the shower. His son, \_\_\_\_\_, helps him do this and also washes his legs and back. Mr. \_\_\_\_\_ agreed that his dad does fall getting into the shower and he is unable to get back up on his own. He helps wash his father's body but his father washes his own hair.
- 6) Claimant stated he has problems dressing himself in that he cannot button his own buttons. He denied buttoning the buttons of the flannel shirt he was wearing the date of the assessment. Claimant said he wore a T-shirt that day under the flannel shirt and the flannel was left open.
- 7) Claimant states he has accidents of the bowel a couple times a week. He states this happens after he takes a laxative when he feels constipated. Mr. \_\_\_\_\_ stated he has to help clean his father up after these accidents.
- 8) Testimony from Mr. \_\_\_\_\_ and Claimant's wife, \_\_\_\_\_, indicated that Claimant had some mental confusion and should have a deficit in orientation. Claimant told Ms. Miller during the assessment that he had put struts on his car a week earlier. Mr. \_\_\_\_\_ stated he, not his father, worked on the car. He was also confused the day of the assessment about who had buttoned his shirt for him.
- 9) Ms. Miller testified that the day of the assessment, Claimant was walking around the house without the use of any assistive devices. She stated he got up at least four (4) times during the assessment without any assistance. He had denied using any devices in several months.

Claimant had also denied needing help getting into the shower during the assessment. Claimant told Ms. Miller that he washes his back, legs and feet with a long handled brush. His son will wash him if he asks him to, but he managed on his own. It was documented by Ms. Miller that Claimant will only shower when his son is home because he is afraid of falling.

Claimant told Ms. Miller at the assessment that he had dressed himself that day and she observed all the buttons including his sleeve buttons were buttoned.

Claimant had told Ms. Miller at the assessment that due to constipation that he sometimes takes laxatives. He denied any incontinence. Ms. Miller stated that a bowel accident after laxative use isn't uncommon for anyone.

Claimant was oriented at the assessment and conversed with her appropriately. He knew the time, date and place correctly.

The information given to Ms. Miller during the assessment was agreed upon by those present. Ms. [REDACTED] testified that she still agrees with the information that was provided

that date as to how it pertained to Claimant's condition at that time. Claimant's son and Claimant's wife were absent from the assessment. Claimant's wife testified that she is rarely there as she stays with their daughter.

- 10) Aged/Disabled Home and Community-Based Services Manual § 503.2 states:

Medical Criteria

An individual must have five (5) deficits on the 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

(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) Bowel Continence - Level 3 or higher; must be incontinent

(f) Bladder Continence - Level 3 or higher; must be incontinent

(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 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 April 2008 medical evaluation.
- 2) Claimant testified that he used a walker several times a week, after having a fall. In order for Claimant to receive a deficit in walking, he would have to be rated a Level 3, one-person assistance in the home. Because Claimant can walk on his own, even with the occasional use of a walker, no deficit can be awarded in this area.

- 3) Testimony indicated that Claimant primarily bathes himself and does get help from his son when he asks. This assistance is offered as a courtesy rather than a need. Although Claimant does require assistance getting into and out of the shower, this alone does not qualify as a deficit for bathing.
- 4) There was conflicting testimony regarding Claimant's ability to dress himself. Claimant denied being able to button buttons. However, he did not seem to have problems in any other area of dressing so no deficit can be awarded.
- 5) Claimant claimed bowel incontinence after using laxatives. Claimant would need to be incontinent without the use laxatives to qualify for a deficit in this area.
- 6) Claimant was completely alert at the hearing. He presented his case clearly and answered questions appropriately. Claimant does not qualify for a deficit in orientation.
- 7) Claimant failed to meet the medical criteria required to continue receiving services through the Aged/Disabled Waiver Program

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate Claimant's services under the Aged/Disabled Waiver Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 31<sup>st</sup> Day of July, 2008.**

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**Kristi Logan  
State Hearing Officer**