



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

December 3, 2008

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

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 2, 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 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  
BoSS  
WVMI  
[REDACTED] Senior Center

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 08-BOR-1983**

**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 December 3, 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 December 2, 2008 on a timely appeal filed August 7, 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  
\_\_\_\_\_, Case Manager, [REDACTED] Senior Center  
\_\_\_\_\_, Claimant's neighbor and Homemaker, [REDACTED] Senior Center  
Kay Ikerd, RN, Bureau of Senior Services  
Melody Lehosit, 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.

It should be noted that all parties participated telephonically.

**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 501, 501.3.1.1 and 501.3.2

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 503 (now 501)
- D-2 Pre-Admission Screening (PAS) completed on July 7, 2008
- D-3 Notice of Potential Denial dated July 8, 2008
- D-4 Denial notice dated July 28, 2008
- D-5 Fair Hearing Request

**Claimant's Exhibits:**

- C-1 Letter from \_\_\_\_\_ dated July 19, 2008
- C-2 Letter from Dr. [REDACTED] dated July 17, 2008

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical reevaluation to determine if he 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 July 7, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified three (3) qualifying

deficits for the Claimant in the areas of physical assistance with bathing and dressing, and bladder incontinence.

- 3) The Claimant was sent a Notice of Potential Denial on July 8, 2008 (D-3) and was advised that he had two weeks to submit additional medical information for consideration. Additional information was submitted (C-1 and C-2), however the documentation failed to change the PAS findings.
- 4) The Claimant was sent a final denial notice on July 28, 2008 (D-4).
- 5) During the hearing, the Claimant's witnesses contended that additional deficits should be awarded in the following areas:

***Inability to vacate the building in the event of an emergency-*** The Claimant's witnesses contended that he would be mentally unable to vacate the building in the event of an emergency due to his dementia and poor memory. The Claimant's Case Manager testified that he would require physical assistance to vacate his home in an emergency situation and provided a letter from Dr. [REDACTED] (C-2) dated July 17, 2008 which states: "Due to his (the Claimant's) dementia he would require assistance vacating a building in the event of an emergency." The letter had been submitted to WVMi following the Claimant's receipt of the Notice of Potential Denial.

The WVMi Nurse testified that the Claimant was rated as requiring prompting/supervision with vacating based on her assessment of his abilities. She indicated that the Claimant was able to move about his residence easily during the assessment - although he used a cane at times - and that all of the home's exits are easily accessible. The Claimant was reportedly oriented during the assessment and agreed that he would require prompting/supervision to vacate. The nurse noted, however, that the Claimant indicated he would simply open a window if he detected smoke in his house. She said the Claimant responded appropriately after she explained that the smoke would be the result of a house fire.

*It is clear that the Claimant has the physical capability to vacate his home in the event of an emergency based on the nurse's assessment. However, in light of his dementia, it is reasonable to believe that the Claimant would require physical assistance to vacate should he become confused or disoriented during an emergency situation. The physician's letter stipulates a need for assistance in vacating and the Case Manager, who was not present during the assessment, believes the Claimant would require hands-on assistance to vacate. Therefore, one (1) additional deficit is awarded for mental inability to vacate in the event of an emergency.*

***Physical assistance with grooming-*** Witnesses testified that the Claimant's toenails are cut by a podiatrist. The letter from Dr. [REDACTED] states that the Claimant "is not capable of caring for his toe nails; therefore has been referred to a podiatrist to complete this task for him."

The WVMi Nurse testified that the Claimant had reported visiting a podiatrist every two months to have his toenails cut. However, she considers toenail cutting as a professional/technical care need because the Claimant's toenails are malformed ("stick up"). The nurse indicated that the Claimant can reach his feet and she believes he is able to

cut his own fingernails. The Claimant's witnesses contended that he did not cut his fingernails during the assessment, but merely held clippers up to his fingers.

*While the Claimant is able to touch his feet with his hands, it is reasonable to believe that he could not effectively trim his toenails due to their malformation. Testimony and documentation reveal that the Claimant receives physical assistance with this grooming need – regardless of who provides the assistance - and one (1) additional deficit is awarded in this area.*

**Physical assistance with eating-** The Claimant's witnesses testified that the Claimant's homemaker cuts up his meat.

The WVMi Nurse testified that the Claimant demonstrated strong grips and dexterity in both hands, and reported he could feed himself. The nurse stated that she observed no hand tremors and believes the homemaker cuts up food primarily as a courtesy and not as functional assistance.

*Because no explanation was provided concerning the reason for cutting meat, no additional deficit can be awarded in this area.*

6) Aged/Disabled Home and Community-Based Services Manual Section 501 - 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 – 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:

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 three (3) deficits on his July 2008 Aged/Disabled Waiver Program medical reevaluation.
- 2) As a result of information provided during the hearing, two (2) additional deficits are awarded to the Claimant in the areas of physical assistance with grooming and mental inability to vacate, bringing the Claimant's total deficits to five (5).
- 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 deficits awarded by the Hearing Officer must 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 3rd Day of December, 2008.**

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**Pamela L. Hinzman  
State Hearing Officer**