



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 468  
Hamlin, WV 25523

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

December 2, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 13, 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 501]

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  
WVMI  
\_\_\_\_\_/\_\_\_\_\_

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 08-BOR-2180**

**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 November 13, 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 November 13, 2008 on a timely appeal filed September 29, 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 current Homemaker
- \_\_\_\_\_, Claimant's previous Homemaker, and friend

Kay Ikerd, BOSS - participated telephonically by telephone  
Traci Gillispie, WVMI, participated telephonically by telephone

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 Section 501

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed on August 27, 2008
- D-3 Notice of Potential Denial dated August 28, 2008
- D-4 Letter dated September 24, 2008 from Dr. [REDACTED] MD
- D-5 Notice of Denial dated September 12, 2008

**Claimant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) The Claimant was undergoing an initial evaluation for eligibility under the Title XIX Aged and Disabled Waiver Program during the month of August 2008.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on August 27, 2008 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified the Claimant received four (4)

deficits on the Pre-Admission Screening (PAS) assessment in the areas of vacating a building, grooming, dressing, and continence.

- 3) The Department sent a Notice of Potential Denial (D-3) on August 28, 2008 addressed to Dr. [REDACTED] in [REDACTED] WV advising that the Claimant had two weeks to submit additional medical information for consideration by WVMI. No evidence was provided to show the Claimant received a copy of this notice. The physician sent a letter to the Department (D-4) dated September 24, 2008 indicating that the Claimant also needs assistance in administering her medications, and requested the Department re-evaluate their decision. This letter was received after the two week timeframe allowed by the Department for submission of additional documentation.
- 4) The Department sent the Claimant a final notice of denial dated September 12, 2008 which included the following pertinent information:

YOUR REQUEST FOR BENEFITS UNDER THE HOME  
AND COMMUNITY BASED AGED/DISABLED  
WAIVER PROGRAM HAS BEEN  
TERMINATED/DENIED.

REASON FOR DECISION: Eligibility for the  
Aged/Disabled Waiver Program requires deficits in at least  
5 of the health areas below. Your PAS (Pre-Admission  
Screening Form), indicated deficiencies in 4 areas – Vacate  
a Building, Grooming, Dressing, Continence.

Because you have less than 5 deficits at the level required,  
your services are being terminated/denied.

- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

**Walking:** which is under Functional Abilities: The Claimant was rated as walking “independently”. The WVMI nurse recorded the following on the PAS:

Applicant denies having any assistive devices such as a  
cane or walker. She reports she has pain and swelling often  
in her feet and legs. I observed the applicant transfer up and  
down from her recliner x 4, without difficulty and  
independently. I also observed her ambulate throughout her  
apartment from her kitchen, living room, to bathroom –  
independently. Her gait was steady. She reported that she  
only has unsteadiness “If I have taken too much medicine, I  
get dizzy”. Applicant denies having to hold onto the  
furniture/walls for support with both transferring and  
ambulating.

Witnesses testified that the Claimant fell twice last month and must hold on to things when she walks.

Medication Administration: The Claimant was rated as needing “prompting/supervision”. The WVMI nurse recorded the following on the PAS:

Weekly HM sorts her meds into 3 different pill boxes, 1 for AM, 1 for afternoon, and 1 for PM doses. HM reports also she writes on a paper what each box is for (AM, afternoon, PM) and places the paper under the boxes. The applicant takes her meds from the pill boxes daily. I observed her taking her meds upon my arrival. These were out on her kitchen counter. HM reports the applicant often still gets her medications confused...states just last week she took too much of her medication. Applicant reported that she gives her own Levemir injections...I asked her to show me how she adjusts the flexpen to get the correct dosage...she turned the pen and then gives the injections herself – demonstrating with her hands how she does this. Applicant verbally gave appropriate answer in how the Levimir should be administered without any difficulty or assistance from either HM.

The Claimant’s current homemaker testified that she goes in every morning to make sure she takes her medicine. She takes it incorrectly and often takes the wrong dosage. Her previous homemaker stated that her doctor wants her to take her insulin during the day. The Claimant’s physician submitted a letter (D-4) indicating the Claimant needed more assistance with taking her medications.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 501 (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 501.3.1.1 states in pertinent part:

– 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 states in pertinent part:

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 four (4) deficits in August 2008 in conjunction with her initial Aged/Disabled Waiver Program evaluation.
- 3) The totality of evidence and testimony presented during this hearing support the finding of an additional one (1) deficit in the area of “medication administration”. Although it is clear that the Claimant can at times take her medication once someone sets it up, it is also clear that this

does not work all the time. The Claimant clearly is not capable of administering her own medications properly without hands on assistance.

- 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. I order that the Claimant also be assessed points in relation to the deficit awarded in arriving at a level of care determination.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 2<sup>nd</sup> day of December, 2008**

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**Cheryl Henson  
State Hearing Officer**