



**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

February 4, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 11, 2007. 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 McKinney Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
[REDACTED] Commission on Aging

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

Claimant,

v.

Action Number: 07-BOR-2260

**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 11, 2007 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 11, 2007 on a timely appeal filed October 9, 2007.

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] County Commission on Aging
_____, Homemaker, [REDACTED] County Commission on Aging

Kay Ikerd, BOSS - participated telephonically
Christine Miller, WVMI, participated telephonically

Presiding at the hearing was Cheryl McKinney 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 August 7, 2007
- D-3 Notice of Potential Denial dated August 17, 2007
- D-4 Notice of Denial dated September 24, 2007
- D-5 Hearing Request dated October 5, 2007

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for eligibility under the Title XIX Aged and Disabled Waiver Program during the month of August 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on August 7, 2007 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, bathing, grooming, and continence.

- 3) The Claimant was sent a Notice of Potential Denial on August 17, 2007 and was advised that she had two weeks to submit additional medical information for consideration by WVMI. No additional information was submitted. (D-3)
- 4) The Department sent the Claimant a Notice of Denial (D-4) on September 24, 2007. The Claimant requested a hearing (D-5) on October 5, 2007. The Department received the request on October 9, 2007.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Dressing: The Claimant was rated as needing self/prompting. The WVMI nurse recorded the following on the PAS:

I asked [sic] her if she was able to dress herself & member reports "sometimes no and sometimes yes." She says her left arm when it gives her a problem she has a hard time getting dressed. She says, "I have to sit down and get dressed because I can't stand up that long." She reports she is able to get her own tops on herself. She reports "When I raise my left arm it starts hurting and I have to take this hand first ® and get it on" as she raised it over her head. She says she wears open blouses so she can put her rt arm in first then her left on rather than having to pull her things over her head. She was able to raise both arms up, the rt one she raised all the way up the left one up to her head. I asked her if she was able to do her own buttons when she wears the open blouses and she reports she can do them but says "I leave them buttoned and just pull them over my head." She reports she can do buttons but says she just leaves them buttoned so she don't have to fool with them. I questioned her that she just said that she wears open blouses because it was easier for her to get her left arm in and she says she leaves them buttoned because she doesn't want to fool with the buttons. She says the pains in her fingers hurts so she just leaves them buttoned and pulls it over her head. She was able to move her arms and hands and fingers around without difficulty. I asked how she gets her pants/lower body dressed and she reports "I got to sit down and put on my pants." She reports she can get them on as long as she is sitting down. She

says she isn't able to get them on when she stands up. She reports sometimes she wears panty hose but only when she is going to conventions and things but other than that she likes to keep her feet bare [sic]. She reports she is able to get her panty hose on herself when she wears them as long as she sits down she can put them on and then get them up herself. She reports she is able to put her own shoes on and reports she has those orthopedic shoes and can put them on herself, they have Velcro straps. She reports she wears a bra she reports she fastens her bra in the front and then turns it around and she can do this herself.

The Claimant's homemaker testified that the WVMI nurse asked the Claimant to demonstrate and when she lifts her left arm, and the Claimant let out a groan, showing obvious discomfort and pain. The Department contends the claimant is able to lift her arm to her head and is able to wash her hair in the shower. The Claimant contends that she needs physical assistance in completing this functional ability, she has nerve damage in her arms, and although she can do some things for herself she does require some physical assistance in this area.

- 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.

#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 2007 in conjunction with her Aged/Disabled Waiver Program re-evaluation.
- 3) Evidence and testimony presented during this hearing support the finding of an additional one (1) deficit in the area of dressing, for a total of five (5) deficits. Although the Claimant can clearly manage some areas of her dressing, she does need physical assistance at times with certain functions.
- 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.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of February, 2008

**Cheryl McKinney Henson
State Hearing Officer**