



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 18, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 16, 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-2305**

**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 16, 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 16, 2008 on a timely appeal filed October 15, 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, participated telephonically

Cecilia Brown, BOSS, participated telephonically

Kathy Gue, 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 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 September 2, 2008
- D-3 Medical Necessity Evaluation Request Form dated August 4, 2008
- D-4 Potential Denial Notice dated September 4, 2008
- D-5 Denial Notice dated September 19, 2008
- D-6 Request for Hearing form and accompanying pages

#### **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 September 2008.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on September 2, 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 eating, bathing, grooming and continence.

- 3) The WVMi sent the Claimant's physician, Dr. [REDACTED] a Notice of Potential Denial (D-4) on September 4, 2008 and was advised that he 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. No additional information was submitted.
- 4) WVMi denied the Claimant, and the Claimant requested a hearing (D-6) on October 10, 2008. The Department received the request on September 27, 2007.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

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

HE DENIES NEEDING HELP WITH  
DRESSING.

The Claimant testified that he can't put on socks and shoes "at times" due to fluid buildup in his legs. He does not recall the nurse asking him much about this function; however, the nurse recorded that he needs help with getting his feet and legs washed when bathing, and recorded the Claimant stated he "can't get his feet washed good".

***Walking:*** The Claimant was assessed as being "independent" in this area. The WVMi nurse recorded the following information on the PAS:

OBSERVED THE MEMBER WALK TO GET  
HIS PAIN MEDICATION [SIC]  
INDEPENDENTLY. HE HAS A CANE TO USE  
AS NEEDED.

The Claimant testified that he uses a cane to walk. He stated the day of the assessment he walked about ten (10) feet without his cane for the nurse.

***Medication Administration:*** The Claimant was assessed as needed "supervision" for this activity. The WVMi nurse recorded the following information on the PAS:

HE SETS UP HIS MEDICATION UP [SIC] WITH  
THE ASSIST OF WIFE AND DAUGHTER. HE  
TAKES THE MEDICATIONS [SIC] FROM THE  
PLANNER WHEN THEY ARE DUE.

The Claimant testified that his wife and daughter were helping him set up his medications, but his wife is now sick and can't help him.

***Vacating a Building:*** The Claimant was rated as being able to vacate his home in an

emergency “with supervision”. The WVMi nurse recorded the following on the PAS:

IN THE EVENT AN EMERGENCY THE  
MEMBER SAYS THAT HE COULD  
PROBABLY VACATE THE HOME. HE SAID  
HE COULD VACATE IF HE COULD GET TO  
HIS MOBILITY CHAIR.

The Claimant testified that sometimes he needs help and he falls occasionally. He stated that if he were “through the house” he doesn’t know if he could get out. He cannot go up and down steps, but he does have a ramp.

- 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 – 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 (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 four (4) deficits in September 2008 in conjunction with his Aged/Disabled Waiver Program initial 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. The Claimant's testimony is corroborated with statements he made throughout the evaluation, and supports a need for physical assistance with dressing.
- 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 rule that the Department shall consider the additional awarded deficit in its determination of level of care.

#### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 18<sup>th</sup> Day of December, 2008**

---

**Cheryl Henson  
State Hearing Officer**