



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 6165  
Wheeling, WV 26003**

**Joe Manchin III**  
**Governor**

**Martha Yeager Walker**  
**Secretary**

January 15, 2008

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

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 19, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue services under the Aged Disabled Waiver, A/DW, 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 A/DW 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 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 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the September 17, 2007 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Melissa Hastings  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BOSS  
CCIL  
WVMI

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

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

v.

**Action Number: 07-BOR-2308**

**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 19, 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 19, 2007 on a timely appeal, filed October 16, 2007.

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's Witnesses:

- claimant
- [REDACTED] - RN Panhandle Service Agency
- [REDACTED] - Homemaker Panhandle Service Agency
- [REDACTED] - Case Manager CCIL

Department's Witnesses:

Kay Ikerd – RN Bureau of Senior Services by phone  
Debra Lemasters – RN WVMI nurse by phone

Presiding at the Hearing was Melissa Hastings, 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 was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Service **Manual §570**

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community based Services Manual §570, 570.1 a,b.
- D-2 Pre-Admission Screening, PAS, completed September 17, 2007
- D-3 Notice of potential denial dated September 20, 2007
- D-4 Notice of termination dated October 8, 2007

**Claimant's Exhibits:**

- C-1 Letter from [REDACTED] MD dated December 11, 2007

### **VII. FINDINGS OF FACT:**

- 1) Ms. \_\_\_\_\_ is a 70 year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on September 17, 2007.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant, her homemaker, the homemaker RN and the case manager participating. The evaluating nurse determined that the claimant had only

two (2) qualifying deficits. She assigned a deficit for Ms. \_\_\_\_\_'s need for physical assistance in grooming and skilled needs.

- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was severe anxiety disorder.
- 4) Claimant's representatives contend Claimant should have been awarded deficits for her inability to vacate the building, medication administration and bathing.
- 5) The Pre-Admission Screening form (D2 section 25) addresses the issue of a Claimant's ability to vacate the building in the event of an emergency. The evaluating nurse has marked this as "With Supervision". On page 7 of 9 of the PAS (D2) the nurse's notes regarding this area read as follows:

Per client she stated she would "get scared" in event of emergency for she stated she would not know what to do about all her things. HM stated she holds onto her arm when they walk down the steps and she would require physical assistance to vacate the building. Client ambulates independently and gait is steady. Due to severe anxiety disorder client would require supervision to vacate in an emergency.

The Claimant's testimony received during this hearing confirms the accuracy of the Nurse's notes.

- 6) The Pre-Admission Screening form (D2 section 28) addresses the issue of a Claimant's ability to administer her own medications. The evaluating nurse has marked this as "With prompting/Supervision". On page 8 of 9 of the PAS (D2) the nurse's notes regarding this area read as follows:

Per client if she tried to fill pill reminder box without supervision she gets her box filled incorrectly. HM supervises her when she fill the pill box. She stated she takes her medication out of pill reminder box and places in her mouth herself.

The Claimant's testimony received during this hearing indicates that she requires a lotion be applied to her body regularly for psoriasis and that the homemaker has to assist her in applying the lotion. The representative from the Bureau of Senior Services confirms that this application of lotion would be considered under the medication administration area.

- 7) The Pre-Admission Screening form (D2 section 26b) addresses the issue of the Claimant's functional ability in the area of bathing. The evaluating nurse has marked this area as a level 1 Self/Prompting. On page 7 of 9 of the PAS (D2) the nurses' notes regarding this area read as follows:

Presently due to open wounds on abd area requiring sterile dressing changes, she cannot shower. Sits on chair by sink to take a sponge bath. Client stated HM washes her feet for her due to it hurts her stomach if she bends over and tried to reach down to her feet. At visit she crossed leg and brought foot up and was

able to reach her foot and started to remove her sock. She stated she could reach her feet this way and it did cause abd pain. Client is able to position legs to reach her feet to wash them herself. Client stated she cannot reach her back to wash it so hm washes her back. Noted at visit client was able to move and raise both arms without difficulty and could wash her back with long handle brush.

Testimony received from the Claimant during this hearing indicates that the homemaker assists her with her bath by washing her back and feet. Claimant states that she has numbness in her hands that makes it difficult for her to bathe herself.

- 8)** Aged/Disabled Home and Community-Based Services Manual Section 570 (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.

- 9)** Aged/Disabled Home and Community-Based Services Manual Section 570.1.a – 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.

- 10)** Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

#24. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

#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. Continence,-- Level 3 or higher must be incontinent bowel
- f. Continence,  
bladder
- g. Orientation ---Level 3 or higher (totally disoriented, comatose)
- h. Transfer-----Level 3 or higher (one person or two person assist in the home)
- i. Walking-----Level 3 or higher (one person assist 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. (Item 26 on the PAS 2005)

#28. The individual is not capable of administering his/her own medications.

### **VIII. CONCLUSIONS OF LAW:**

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMN nurse assigned the claimant two (2) qualifying deficits in the areas of grooming and skilled needs.
- 2) The issues raised at the hearing were in the area of Medication Administration, Bathing and Ability to vacate a building..
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on September 17, 2007 .
- 4) The functional levels assigned in the contested area of Ability to Vacate a Building was made according to Aged/Disabled Waiver Program Policy §570 through 570.1c.
- 5) The testimony received during this hearing reveals that Claimant does require assistance in administering the prescription medication (lotion) for her psoriasis which qualifies her for a deficit in this area.

- 6) Testimony received during this hearing reveals that Claimant does require physical assistance in the area of bathing which qualifies her for a deficit in this area.

## **IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, the hearings officer finds that two (2) additional deficits in the areas of medication administration and bathing are awarded. The agency's evaluating nurse awarded the Claimant two (2) deficits in the areas of grooming and skilled needs. This brings the total deficit award to four (4). The program requires five (5) deficits to be eligible therefore the department's proposed action to terminate services through the Aged/Disable Waiver Program is **upheld**.

## **IX. RIGHT OF APPEAL:**

See Attachment

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 15th Day of January 2008.**

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**Melissa Hastings  
State Hearing Officer**