



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757**

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 January 8, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of medical eligibility for services under the Aged Disabled Waiver, ADW 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 ADW 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 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the September 27, 2007 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the action of the Department to deny services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Oretta Keeney, WVMI
[REDACTED] WV Legal Aid

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

_____,
Claimant,

v.

Action Number: 07-BOR-2375

**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 January 8, 2008 for _____ - on a timely appeal filed October 29, 2007. 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.

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

_____, claimant's homemaker, [REDACTED] Senior Services

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone
Tammy Kessell, WVMi nurse, by speakerphone

Claimant's Representative, [REDACTED] WV Legal Aid

Presiding at the Hearing was Sharon K. Yoho, 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 deny medical eligibility for services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §500**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community based Services Manual §503 thru 503.4
- D-2 Pre-Admission Screening, PAS, completed September 27, 2007
- D-3 Eligibility Determination dated September 27, 2007
- D-4 Notice of potential denial dated October 1, 2007
- D-5 Notice of denial dated October 17, 2007

VII. FINDINGS OF FACT:

- 1) This claimant is a 58-year-old female with primary diagnosis of Coronary Artery Disease, End Stage Renal Disease, and Congestive Heart Failure. Her prognosis is Terminal. She is on Kidney Dialysis. She also has diagnosis of diabetes, Arthritis, Dysphagia and Pain. The claimant has current homemaker services provided by the Senior Center of [REDACTED] County.
- 2) A WV Medical Institute (WVMi) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on September 27, 2007 with the claimant and a case manager from [REDACTED] Senior Center present. The nurse determined from observation and the answers given to her at the assessment that only one qualifying deficits could be awarded. This deficit was assessed in the area of Skilled Care needs. This is due to sterile dressings related to dialysis.
- 3) The WV Legal Aid representative raised issue in seven areas of the PAS. These areas were in bathing, dressing, grooming, incontinence, orientation, transferring and

walking, which are all in the category of Functional Levels in the home. The area of vacating in the event of an emergency was also addressed

- 4) The claimant advised the nurse on the date of the assessment that she needed help with bathing and washing her hair. She told the nurse that she needed help getting in and out of the bathtub and that her homemaker helps her with washing her back and head. The nurse did not assess a deficit in either bathing or grooming. The nurse testified that the claimant has a sliding bench and that she observed that the claimant has full range of motion in her arms. The claimant told the nurse that she could use a back scrubber to wash her back. The claimant testified that she could not get in and out of the bathtub without help from others. She stated that she tries to wash her own hair but knows she cannot do a good job so she does not wash her hair unless the homemaker is there to help her.
- 5) The claimant stays in a wheelchair throughout the day. She told the nurse that the last time she was ambulatory was 2 years ago. She advised the nurse that she walks very little and is not able to use a cane or walker to ambulate. The nurse observed the claimant take a few steps using a walker on the day of the assessment without hands on assistance. The nurse notes that the claimant needs supervised assistance due to problem with balance being off and her left leg dragging when walking. The claimant testified that she has arthritis in her knees and hips and that Physical Therapy tried to work with her in walking and gave up. She stated that the last time she tried to walk she fell down. She says that she has fallen five or six times. The evaluating nurse did not assess a deficit for needing hands on assistance for walking.
- 6) At the evaluation, the claimant advised the nurse that she might need a little bit of help in vacating in an emergency. About evacuation, the nurse notes in her assessment that the claimant can walk with stand by assistance. The nurse assessed the claimant as only needing supervision for vacating in the event of an emergency. The claimant testified that in the event of an emergency, she would have to try to get out on her own in the wheelchair. She said that she would have to back the wheelchair out of the doorway and that the front wheels may twist and get stuck. She says that if she did get the wheelchair out of the door, she would then have to go down the ramp backwards and try to navigate the wheelchair over a lip and a drop off at the bottom of the ramp.
- 7) The claimant is able to dress herself with difficulty. She states that it is easier for someone else to pull up the back of her pants. She does not always get them pulled all the way up. She routinely wears clothing that does not require pants on days when she does not have help.
- 8) The claimant is oriented to person, place and time. She has intermittent confusion on days when she receives dialysis. She becomes confused when her blood sugar drops, but knows to go to kitchen to get a bar of candy and eat them.
- 9) The claimant has occasional episodes of bowel incontinence. She advised the nurse during the assessment that this occurs approximately one time per month. At the hearing, the claimant stated that the occurrences are about once every other week.

10) The claimant advised the nurse at the assessment that she has no problems with transfer and the nurse observed the claimant transfer from her wheelchair to a kitchen chair. At the hearing, the claimant testified that on days of dialysis, her husband tries to help her with her transfers.

11) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

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.

12) Aged Disabled Home and Community-Based Services Manual Section 503.1: MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the ADW Program.

13) 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 members are medically eligible based on current and accurate evaluations.

B. Each applicant/member determined to be medically eligible for ADW 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.

14) Aged Disabled Home and Community-Based Services Manual Section 503.2 MEDICAL CRITERIA:

An individual must have five deficits on the Pre-Admission Screening Form (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 to vacate 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. (Item 25 on the PAS 2005).

- | | |
|----------------------------|---|
| a. Eating----- | Level 2 or higher (physical assistance to get nourishment, not preparation) |
| b. Bathing ----- | Level 2 or higher (physical assistance or more) |
| c. Grooming--- | Level 2 or higher (physical assistance or more) |
| d. Dressing ----- | Level 2 or higher (physical assistance or more) |
| e. Continence--
bowel | Level 3 or higher; must be incontinent |
| f. Continence--
bladder | Level 3 or higher; must be incontinent |
| 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.

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

15) Aged Disabled Home and Community-Based Services Manual Section 503.4

MEDICAL REEVALUATION:

Annual reevaluations for medical necessity for each ADW member must be conducted.

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 WVMi nurse, determine that the claimant had only one qualifying deficits in the area of skilled needs.

- 2) The claimant advised the nurse at assessment that she needed hands on assistance with bathing and grooming. Testimony and evidence supports that the claimant does require hands on assistance in both of these areas. Although the claimant may have full range of motion in her arms, it is reasonable to believe that her arthritis could be the determining factor in her need for help with hair washing and getting in and out of the bathtub.
- 3) Policy provides that if the individual needs physical assistance in walking a deficit is to be assessed. The claimant cannot safely walk and therefore she does not attempt this activity often. She has had several falls. The nurse asked her to and observed her take a few steps without hands on assistance. The nurse observed that the claimant's balance was off and that she drags her left leg when taking steps. It was this observation that led the evaluating nurse not to assess a deficit in either walking or vacating. This claimant advised the nurse at assessment that she would need help vacating in the event of an emergency. Testimony and evidence supports that the claimant would require assistance from others to ambulate and to vacate in an emergency. Policy stipulates that if the individual cannot independently vacate in an emergency that a deficit is to be assessed.
- 4) The evaluating nurse after being advised by the claimant of her need for assistance in bathing, grooming and vacating chose to make a judgment call to the contrary. This claimant appeared to this Hearing Officer to a credible witness. Her testimony reiterated the information given to the nurse at evaluation. This claimant spends most of her waking hours in a wheelchair and it is reasonable to believe that when she attempts to ambulate, she would require hands on assistance to do so safely.
- 5) The claimant should have been assessed five (5) qualifying deficits in skilled needs, bathing, grooming, walking and vacating.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was incorrect in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **reverse** the Department's action to deny medical eligibility for services under the Aged Disabled Title XIX (HCB) Waiver program. I rule that the Department assess the claimant with the above qualifying deficits and the associated points for determining the level of care.

X. 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.

**Sharon K. Yoho
State Hearing Officer**