



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 31, 2008

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

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 9, 2008. Your hearing request was based on the Department of Health and Human Resources' proposed termination of 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 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 action of the Department to terminate 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] Central WV Aging Services

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

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

v.

**Action Number: 07-BOR-2420**

**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 9, 2008 for \_\_\_\_\_ - on a timely appeal filed November 5, 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

\_\_\_\_\_  
Homemaker, Central WV Aging Services (CWVAS)  
\_\_\_\_\_  
CM, Central WV Aging Services

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone

Tammy Kessell, WVMI nurse, by speakerphone

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 discontinue services under the Aged/Disabled Waiver (HCB) program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Service **Manual §500& Attachment 14**

**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 17, 2007
- D-3 Eligibility Determination dated September 17, 2007
- D-4 Notice of potential denial dated September 24, 2007
- D-5 Notice of denial dated October 23, 2007

**Claimant's Exhibits:**

- C-1 Letter from Claimant dated October 1, 2007
- C-2 Letter from Claimant's Homemaker

**VII. FINDINGS OF FACT:**

- 1) This claimant is a 73-year-old male whose Aged Disabled waiver case was undergoing a re-evaluation in September 2007. He has primary diagnoses of Hypertension, Diabetes, Prostatic Hypertrophy, Coronary Artery Disease and Schizophrenia.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on September 17, 2007 with the claimant, his homemaker RN and his homemaker present.

- 3) The evaluating nurse assigned two qualifying deficits based on the information gathered from the persons present. These deficits were in the areas of vacating and transferring. The nurse went over the answers given at the end of the assessment. None of the participants offered any changes to the information given. The claimant and his homemaker reported to the Department following the denial notification that the claimant was not truthful during the PAS due to fear of nursing home placement.
- 4) The claimant and his witnesses raised issues in the areas of incontinence, walking, bathing and dressing.
- 5) The claimant advised the nurse during the PAS that he had previously had problems with his bowels but that he has control of them now. He told her that he has leakage of his bladder about 2 or 3 times per week and that; he does not wear any pads or depends. He advised that he has to change his under ware 3 times a week or less. His homemaker testified that he is wet a lot. She reports it to be 2 or 3 times a week and that it may be more lately.
- 6) The evaluating nurse observed the claimant ambulate during the assessment. She reports that he ambulated without hands on assistance. She observed him to ambulate with a shuffle and to have problems with gait and balance. His case manager testified that he walks using a rolling walker and that they hold on to him due to a history of falls. His homemaker testified that she holds on to him on the way to and from the bathroom. The evaluating nurse was not advised of any history of falls during her assessment.
- 7) The claimant's homemaker advised the evaluating nurse that the claimant tells her that he takes his shower at night. He reported that he steps over the rail using a grab bar. He sits on a shower chair to bath. He told the nurse that he uses a hand sprayer and back scrubber. He advised her that he washes all body parts from head to toe. The homemaker testified that she washes his back and legs.
- 8) The claimant did tell the nurse that he cannot button his shirts and that he leaves them unbuttoned. The homemaker reported to the nurse that she buttons the claimant's shirts part of the way up for him. The nurse stated that the homemaker pre-buttons the shirts. The claimant advised the nurse that he uses a sock apparatus to put his socks on. The homemaker testified that the claimant cannot get his socks on, and that she puts his feet in his pants, and they both pull them up.
- 9) 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.

**10) 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.

**11) 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.

**12) 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-- Level 3 or higher; must be incontinent  
    bowel
- f. Continence-- Level 3 or higher; must be incontinent  
    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.

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

- 13) 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.

- 14) Aged Disabled Home and Community-Based Services Manual Attachment 14

- f. Cont./Bowel Continent (level 1) Occas. Incontinent (level 2)  
**less than 3 per wk.**  
Incontinent (level 3)

### 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 two qualifying deficits in the areas of vacating and transferring.
- 2) Evidence and testimony provided for this hearing did support that a deficit should have been assessed in the area of dressing at the time of the PAS. The claimant cannot button his shirts and he advised the nurse of this. Whether the homemaker pre-buttons or buttons them while on the claimant, this is a tasks of dressing that has to be done by others. Testimony also supports that the claimant cannot put his own socks on.
- 3) Evidence and testimony did not support the need for physical assistance in bathing or walking. This claimant described to the nurse in detail how he accomplishes his bathing on his own. The homemaker was present at the assessment and did not offer any information to the contrary. The claimant walks with a rolling walker and while it is reasonable to believe that he would benefit from someone walking along beside him to supervise his ambulation, he demonstrated that he is able to walk without hands on assistance by others.

- 4) The claimant does not wear any pads or adult diapers for his reported bladder incontinence. The occurrences reported for bladder incontinence were 2 to 3 times per week, which would average to less than 3 times per week. Policy in Attachment 14 provides that a level 2 assessment is given for bladder incontinence of less than 3 times per week. A deficit is awarded for only those at a level 3. Testimony indicates that the occurrences may have increased since the September PAS, but the Department was determining his medical condition as of the time of the PAS.
- 5) While the claimant should have been assessed one additional deficit in the area of dressing, the total number of deficits would still fall below the five (5) necessary for approval.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was correct in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **uphold** the Department's action to terminate this claimant's services under the Aged Disabled Title XIX (HCB) Waiver program.

**IX. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 31<sup>st</sup> Day of January 2008.**

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**Sharon K. Yoho  
State Hearing Officer**