



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St
Charleston, WV 25313
304-746-2360 Ext 2227**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

October 17, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 11, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Aged & Disabled (HCB) Title XIX Waiver Services Program.

In arriving at a decision, the State Hearings 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.

The information which was submitted at your hearing revealed that your medical condition requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearings Officer to reverse the proposed decision of the Department to terminate your benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Jennifer Butcher
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
BoSS
CWVAS
WVMI

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

_____,

Claimant,

v.

Action Number: 08 -BOR-2704

**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 October 17, 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 July 11, 2008 on a timely appeal, filed December 19, 2007.

It should be noted the claimant's benefits has 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
_____, Homemaker RN, Central West Virginia Aging Service
_____, Homemaker (not participating)
Kay Ikerd, BoSS, RN
Stacy Leadman, WVMI, RN (participating by phone)

Presiding at the Hearing was Jennifer Butcher, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Agency was correct in its decision to propose termination of the Claimant's benefits and services through the Medicaid Aged & Disabled Home and Community-Based Waiver Services 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) completed on November 27, 2007
- D-3 Notice of Potential Denial dated December 3, 2007
- D-4 Notice of Termination/Denial dated December 18, 2008
- D-5 Hearing request dated December 19, 2007
- D-6 Letter from [REDACTED] RN for CWVASI dated March 4, 2008
- D-7 Fax from The Family Medicine Center [REDACTED] dated March 3, 2008 by Dr. [REDACTED] M.D.

Claimants' Exhibits:

- C-1 Request from Central West Virginia Aging Service for information regarding medical limitations for Claimant dated December 3, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant completed her Pre-Admission Screening (PAS) re-evaluation on November 27, 2007 that resulted in the determination that the Claimant is no longer medically eligible to participate in the Medicaid Aged & Disabled Waiver Services Program.
- 2) On or about December 3, 2007, the Claimant was notified of Potential Denial (D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2. See attached criteria.

Based on your PAS you have deficiencies in only 4 areas – Vacate a Building, Bathing, Grooming, and Continence.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

- 3) This notice goes on to advise the Claimant that she can provide additional information regarding her medical condition within two (2) weeks for consideration before a final decision is made. However, if no additional information is received within two (2) weeks from the date of the notice, she will be sent a denial notice.
- 4) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated June 27, 2008 (D-5). This notice states, in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

REASON FOR DECISION: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in four (4) areas – Vacate a Building, Bathing, Grooming, and Continence.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 5) The Claimant contends that in addition to the four deficits awarded by the Department, she should have also been found deficient in Eating and Dressing.
- 6) The Homemaker RN testified she had sent a fax on December 3, 2007 to Claimant's primary physician, Dr. [REDACTED] Exhibit D-7, requesting a response within forty-eight (48) hours, regarding the specific needs of the Claimant. The response to the fax was dated March 4, 2008, more than the two (2) weeks required by the Department. The faxed stated "_____ has Osteoarthritis of the hands which makes it difficult for her to dress and feed herself" signed [REDACTED] M.D. This information was not returned timely but was entered as evidence.

Eating – In order to qualify for a deficit in eating, the individual must require physical assistance. The Homemaker RN testified the Claimant, sometimes needs assistance with her food, but did not indicate that someone needs to physically feed the Claimant. Based on the definition of the requirement for this deficit, no additional points will be awarded.

Dressing – The Homemaker RN testified to receiving a call from the former caregiver, who was present at the time of the assessment. The former caregiver stated she and the Claimant had an agreement in regards to getting dressed in the mornings. The caregiver would button her blouse and lay it on the bed the night before so it would be ready for the Claimant to dress herself in the mornings. This information was not presented at the day of the assessment. The WVM RN asked the Claimant the day of the assessment if she dressed herself that morning

and she stated “yes”, and the representatives for the Claimant explained to the WVMi RN that she had the blouse buttoned before she dressed herself. The assessment also indicated Claimant dresses herself, but needs help sometime with her socks. According to the information provided by the PAS, the Claimant suffers from memory loss and was treated for this in 2005 as an outpatient at ██████████ Hospital. The documentation of the memory loss and the testimony from the Homemaker RN and supporting evidence merits the approval of an additional deficit for needing assistance with dressing.

- 7) Aged/Disabled Home and Community-Based Services Manual Section 503 (D-1) - Program Eligibility for Client includes the following:

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.

- 8) 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.

- 9) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Chapter 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.

#24 Decubitus - Stage 3 or 4

#25 In the event of an emergency, the individual can vacate the building: a) independently, b) with supervision, c) mentally unable or d) physically unable to vacate a building. Vacating independently or with Supervision is not considered a deficit.

#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 :
(g) suctioning, (h) tracheotomy, (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 states that an individual must have five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded four (4) deficits on a PAS assessment completed by WVMi in November, 2007 for Vacating, Bating, Grooming, and Continence.
- 3) The evidence submitted at the hearing identifies one (1) additional deficit – Dressing
- 4) The Claimant has established five (5) program deficits; this essentially qualifies for the continued medical eligibility for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's benefits and services through the Medicaid, Aged/Disabled, Title XIX, (HCB) Waiver.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this Day of October, 2008.

**Jennifer Butcher
State Hearing Officer**