



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

May 16, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 6, 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 November 28, 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] Senior Services

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

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

**v. Action Number: 08-BOR-682**

**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 May 6, 2008 for \_\_\_\_\_ on a timely appeal filed January 22, 2008. 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  
\_\_\_\_\_, [REDACTED] Senior Center  
\_\_\_\_\_, Central WV Aging Services

Department's Witnesses:

Jennie Sutherland, Bureau of Senior Services  
Tammy Kessell, WVMI nurse

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

All participants appeared by speakerphone.

**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 November 28, 2007
- D-3 Eligibility Determination, dated November 28, 2007
- D-4 Notice of potential denial dated December 6, 2007
- D-5 Notice of denial dated January 9, 2008

**Claimant's Exhibits:**

- C-1 Letter from Physician at Family Medicine dated received December 13, 2007

**VII. FINDINGS OF FACT:**

- 1) This claimant is a 77-year-old female. She submitted an application for services under the Aged Disabled Waiver program in September 2007. She has primary diagnoses of Chronic Obstructive Pulmonary Disease, Hypertension, Arthritis Significant and urinary incontinence.

- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on November 28, 2007 with the claimant. Based on what the nurse observed and the answers given to her by the claimant at the assessment, she determined that only three qualifying deficit could be awarded. These qualifying deficits were in the areas of bathing, grooming and incontinence.
- 3) The claimant and her witnesses introduced issues in the areas of dressing, walking and vacating.
- 4) During the evaluation, the claimant advised the nurse that she has problems with getting dressed. She has a device that she can use to help her put on socks. She can bend completely over to touch her right foot. She can only touch just above her left ankle. She advised the nurse that she has a device that can help her with buttoning. She told the nurse that she does not wear anything that needs tied, zipped or snapped. The Claimant testified that the only thing that she could put on was a housedress and slip on shoes. She reported that she doesn't wear socks.
- 5) The claimant ambulates with a walker without hands on assistance. She does not feel secure using a cane. She does get short of breath when ambulating due to her COPD. She lives in a second floor apartment and uses the elevator to go to the first floor. She told the evaluating nurse that she cannot go up stairs, but she could go down stairs if there was a railing. The nurse assessed her as being able to vacate the home in the event of an emergency. The claimant testified that she never goes down steps and that she can only walk 5 to 10 feet with her walker before she has to sit down to rest.
- 6) 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.
- 7) 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.
- 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 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.

9) 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--<br>bowel   | Level 3 or higher; must be incontinent  |
| f. Continence--<br>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.

10) 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 three qualifying deficits in the area of bathing, grooming and incontinence.

- 2) Evidence and testimony provided for this hearing support that an additional deficit should have been assessed for dressing. The claimant only wears housecoats and slip on shoes without socks. The fact that she has a device to help with socks and buttons confirms that she cannot put socks on or button clothing without these devices. If these devices worked well for her, she would most likely be wearing socks especially during the winter months. She told the nurse that she does not wear anything that ties, zips or snaps. This infers that along with the difficulty she has with socks and buttons, she cannot tie, zip or snap. It is obvious that this claimant has made accommodations with dressing since she has no help in the home. Unfortunately, her solution to her dressing problem is to limit her clothing to a housecoat and slip on shoes. It is clear that she needs hands on assistance to dress appropriately.
  
- 3) The claimant should have been assessed a deficit for needing hands on assistance to vacate in the event of an emergency. Her COPD and Significant arthritis makes it difficult for her to walk any distance without needing to rest. She lives in a second floor apartment, ambulates with a walker and never goes down the stairs, which would be her only avenue to vacate in the event of a fire. While it is clear that this claimant does not need hands on assistance to ambulate in normal situations, she would need assistance to get down the flight of stairs in the event of an emergency.

**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 this claimant services under the Aged Disabled Title XIX (HCB) Waiver program. I rule that the Department assess a deficit in dressing and vacating and assign the associated points in determining the level of care.

**IX. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 16th Day of May 2008.**

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**Sharon K. Yoho  
State Hearing Officer**