



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

April 30, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 22, 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 December 14, 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 medical eligibility for 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, WVM I

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 08-BOR-780**

**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 April 22, 2008 for \_\_\_\_\_ on a timely appeal filed January 31, 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

\_\_\_\_\_, claimant's friend

\_\_\_\_\_, claimant's daughter  
\_\_\_\_\_, 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 deny medical eligibility for services under the Aged/Disabled Waiver (HCB) program.

**V. APPLICABLE POLICY:**

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

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community based Services Manual §503 thru 503.2
- D-2 Pre-Admission Screening, PAS, completed December 14, 2007
- D-3 Eligibility Determination dated December 14, 2007
- D-4 Notice of potential denial dated January 3, 2008
- D-5 Notice of denial dated January 21, 2008

**Claimant's Exhibits:**

- C-1 Doctor's note dated April 8, 2008

**VII. FINDINGS OF FACT:**

- 1) This claimant is a 79-year-old female with primary diagnosis of Insulin Dependent Diabetes, Congestive Heart Failure and Thyroid Disease. An application was submitted for the Aged Disabled Waiver program in December 2007.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on December 14, 2007 with the claimant. The claimant's friend and a representative from Central WV Aging were present when the nurse arrived but did not stay for the evaluation or review.

- 3) The evaluating nurse determined from observation and information gathered from the claimant that four deficits could be assessed. These were in the areas of bathing, dressing, grooming and incontinence.
- 4) The claimant and her witnesses raised issues in the area of vacating in the event of an emergency. During the evaluation, the claimant advised the nurse of her concerns regarding ambulating necessary steps to vacate. She told the nurse that she thought she could get out if she had her walker. She told the nurse that she thinks she could get as far as the garage without hands on assistance but she thinks she could use hands on assistance to evacuate. She advised the nurse that she would be scared and that she is not great in emergency situations. The evaluating nurse testified that she did not observe the three exits other than the front exit. She testified that based on the claimant's ability to transfer and walk she formed the opinion that she would be able to get out in an emergency.
- 5) The claimant testified that she has tried to get out of the front door on her own, but has not been able to without someone holding on to her. The front exit has steps with no railing to hold on to. She stated that she could open the door leading to the garage, but once in the garage, she could not go any further. The exit to the deck has a step and a ledge that the claimant would not be able to maneuver over with her walker. The claimant also voiced concerns of the possibility of a home fire and not being able to get away from the home using her walker in gravel.
- 6) Exhibit C-1, note from the claimant's physician of past two years states, "In the event of an emergency, she would definitely require hands on assistance to vacate her home due to her very slow and unsteady ambulation."
- 7) 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.
- 8) 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.
- 9) 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.

**10) 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.

**11) 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 four qualifying deficits in the area of bathing, dressing, grooming and incontinence.

- 2) Policy states, “**In the event of an emergency**, (emphasis added) the individual is c) mentally unable or d) physically unable to vacate a building.” In normal situations, this claimant is clearly able to ambulate using a walker without hands on assistance. The information that the claimant gave to the evaluating nurse clearly demonstrated that the claimant believed she would not be able to vacate in the event of an emergency without hands on assistance. The nurse formed the opinion that the claimant could vacate because she requires no hands on assistance to transfer and walk in normal situations. Policy is clear that the vacating event in question is that of an emergency.
  
- 3) Evidence and testimony concludes that this claimant would need hands on assistance to vacate her home in the event of an emergency. A deficit should have been assessed in this area. A total of five deficits should have been assessed and medical eligibility should have been approved.

**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 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 30<sup>th</sup> Day of April 2008.**

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**Sharon K. Yoho  
State Hearing Officer**