



**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 9, 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 no longer 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 uphold the Department's proposal 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
WVMI
Allied Nursing and Community Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-859

**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 originally scheduled to convene on June 4, 2008, was rescheduled due to power and phone outage in the _____ County DHHR office. The hearing reconvened on July 9, 2008 on a timely appeal, filed February 5, 2008.

It should be noted the Claimant's benefits have 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 are 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 of care, but who have chosen the Waiver Program as opposed to being institutionalized.

III. PARTICIPANTS:

_____, Claimant

Participating by phone:

Brenda Myers Case Manager, Allied Nursing and Community Service

Kay Ikerd, BoSS, RN
Angela Hill, WVMI, RN
Melody Lehosit WVMI, RN, trainee observing

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 December 17, 2007
- D-3 Notice of Potential Denial dated December 19, 2007
- D-4 Statement from _____ dated December 27, 2007 providing additional information.
- D-5 Notice of Termination/Denial dated January 15, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant's appeal was filed on February 5, 2008 following a Pre-Admission Screening (hereinafter PAS) medical assessment completed on December 17, 2007 that resulted in the determination that the Claimant is no longer medically eligible to participate in the Medicaid Aged & Disabled Waiver Services Program. A statement, Exhibit D-4, from Claimant was submitted as additional information regarding her medical conditions. This was not considered during the assessment and incorrect information was recorded by the WVMI RN. The final denial was issued on January 17, 2008. The Claimant's hearing, as noted in Section I, was scheduled to convene on June 4, 2008, but was rescheduled due to power and phone outage in the ██████ County DHHR Office. The Claimant's appeal was rescheduled to convene on July 9, 2008.
- 2) On or about December 19, 2007, the Claimant was notified of Potential Denial (Exhibit 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 section Chapter 503.2. See attached criteria.

Based on your PAS, you have deficiencies in only three (3) areas – Bathing, Grooming and Dressing.

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

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.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed 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 3 areas – Bathing, Grooming and Dressing.

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

- 4) The Claimant contends that, in addition to the three (3) deficits awarded by the Department, she should have been found to have deficits in Eating and Continence of the Bladder.

Eating- In order to qualify for a deficit in eating, the individual must require physical assistance. The Claimant testified that during the assessment and in the additional information that was submitted she was not allowed to use a knife to cut her food due to the bleeding precaution from the Coumadin prescription. The WVM RN responded by presenting the documentation on the PAS that acknowledged the Claimant stated she was not allowed to use knives to cut up her food, but no restrictions were presented by her physician indicating she was not to use knives. The Claimant is able to feed herself without any assistance from another person. Therefore the WVM RN rated the eating deficit correctly.

Continence of Bladder- In order to qualify for the deficit of incontinence, it must occur three or more times in a week. According to the Claimant's testimony, the WVM RN entered the information incorrectly by noting Claimant would have accidents three times per month. The information presented in (Exhibit D-4) indicated the Claimant did give the correct information. Also the list of medications the Claimant was taking at the time of the PAS states she took Furosemide of 40MG/PO daily for fluid thinner. The medication is a diuretic according to the Dorland's Illustrated Medical Dictionary Twenty-fifth Edition. The WVM RN stated the Claimant did not wear Depends or pads and there was no documentation from a physician indicating bladder incontinence. The deficit for Bladder Incontinence will be awarded, due to the medication taken for as a fluid thinner that may cause an increase in urine output.
Aged/Disabled Home and Community-Based Services Manual Section 503 (D-1) - Program Eligibility for Client states:

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.
- 5) 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 the state.
- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual §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 are 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) tracheostomy, (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 three (3) deficits on a PAS assessment completed by WVMI in May 2008 – Bathing, Grooming and Dressing.
- 3) The evidence submitted at the hearing confirms that an additional deficit is demonstrated in Bladder Incontinence.
- 4) Whereas the Claimant demonstrates four (4) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program cannot be established.

IX DECISION:

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

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**