



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington Street
Charleston, WV 25313
304-746-2360
Fax #304-558-0851**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

September 3, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 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 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 Aged/Disabled Waiver Program is based on current policy and regulations. One of these regulations specifies that for the Aged/Disabled Waiver Program, the number of homemaker service hours is determined based on your Level of Care (LOC). The Level of Care is determined by evaluating the Pre-Admission Screening Form (PAS) and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units/hours which is reviewed and approved by WVMI. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual 503.2, 503.2.1 and 503.2.2)

Information submitted at your hearing revealed no additional deficits should have been awarded on the final decision completed by West Virginia Medical Institute Registered nurse.

It is the decision of the State Hearing Officer to uphold the decision of the Department to terminate service of the Aged and Disabled Waiver Program.

Sincerely,

Jennifer Butcher
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
WVMI

BOSS
Special Touch Nursing Service

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

_____,

Claimant,

v.

Action Number: 08-BOR-913

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 September 3, 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 June 11, 2008 on a timely appeal filed February 19, 2008.

It should be noted here that the Claimant's benefits have 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's Witnesses

_____, Claimant

_____, Homemaker RN

_____, Social Worker with Special Touch Nursing

_____, Homemaker

Department's Witnesses

Kaye Ikerd, RN - Bureau of Senior Services by telephone

Paula Clark, WVMI, RN

It should be sated that Claimant and her witnesses are participating by phone conference.

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(s) to be decided is whether the Agency was correct in its decision to terminate the Aged/Disabled Waiver Program for the claimant.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual Section 500, 503.2, 503.2.1 and 503.2.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community-Based Services Manual Sections 503.2, 503.2.1 and 503.2.2

D-2 Pre-Admission Screening herein after (PAS) for Aged/Disabled Waiver Service dated January 15, 2008

D-3 Potential denial notice dated January 28, 2008

D-4 Additional medical information from Dr. _____ dated January 29, 2008

D-5 The final termination/denial notice dated February 19, 2008

Claimant's Exhibits

None

VII. FINDINGS OF FACT:

- 1) Claimant is a 76 year old female. Her Aged/Disabled Waiver program eligibility was evaluated on January 15, 2008.
- 2) A WV Medical Institute hereinafter known as (WVMI) Nurse completed a Pre-Admission Screening (D-2) on January 15, 2008 with claimant and her case manager and homemaker participating. The evaluating nurse determined that the claimant did not meet the medical eligibility criteria for the AD/W program.
- 3) The Claimant was assigned three deficits by the evaluating nurse for documented medical conditions that require nursing services.
- 4) The Claimant was sent notification on January 28, 2008 (D-3) advising her of the potential denial of her re-evaluation by only receiving three deficits for Vacating a Building, Grooming, and Continence for bladder.
- 5) Additional medical information was submitted on January 29, 2008 by Dr. [REDACTED] (Exhibit D 4) requesting extra consideration it is medically necessary for Claimant to have help with walking and transferring.
- 6) According to the PAS the additional medical provided did not offer any further deficits for the claimant however after further review an additional deficit was given for bathing.
- 7) Final notification of termination was sent on February 19, 2008 awarding four deficits for Vacating a Building, Bathing, Grooming and Continence.
- 8) According to the homemaker RN the deficit that is in dispute is walking.

Walking- The additional information provided by the physician states it is medically necessary for help with walking. According to testimony from [REDACTED] Homemaker RN and [REDACTED] Social Worker both state the claimant had fallen more frequently in the past year and being unstable as she walks. The notes from the PAS acknowledged the frequency of falls and difficulty walking, as well as in the section titled Any Other Illness/Disease Being TX: which states multiple falls with injuries. The Claimant testified herself that if she would use her walker more often, she would be more stable and would not be falling as much. Therefore by not using the proper equipment that has been provided to assist her in her walking a deficit could not be awarded.

- 9) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2, 503.2.1 and 503.2.2 (D-1): There are four levels of care for homemaker services. Points will be determined as follows, based on the following sections of the PAS:

- #23- Medical Conditions/Symptoms -1 point for each (can have total of 12 points)
- #24- Decubitis - 1 point
- #25 1 point for b, c, or d
- #26- Functional Abilities
 - Level 1 - 0 points
 - Level 2 - 1 point for each item A through I
 - Level 3 - 2 points for each item A through M; I (walking) must be equal to or greater than Level III before points are given for J (wheeling)

- Level 4 - 1 point for A, 1 point for E, 1 point for F, 2 points for G through M
- #27 Professional and Technical Care Needs - 1 point for continuous oxygen
 - #28 Medication Administrations – 1 point for b or c
 - #34- Dementia - 1 point if Alzheimer’s or other dementia
 - #35- Prognosis - 1 point if terminal

The total number of points possible is 44.

LEVELS OF CARE SERVICE LIMITS

- Level A- 5 points to 9 points- 2 hours per day or 62 hours per month
- Level B- 10 points to 17 points- 3 hours per day or 93 hours per month
- Level C- 18 points to 25 points- 4 hours per day or 124 hours per month
- Level D- 26 points to 44 points- 5 hours per day or 155 hours per month

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual must have five (5) deficits on the Pre-Admission Screening Form and only four (4) were established on the properly completed by the WVMi nurse.
- 2) Evidence presented at this hearing indicates that Claimant did not have any additional deficits at the time the PAS was completed.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Agency’s decision to terminate the services of The 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 4th day of September, 2008.

Jennifer Butcher
State Hearing Officer