



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

May 28, 2008

\_\_\_\_\_  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 27, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under 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. 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]

Information submitted at your hearing reveals that you meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

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

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

v.

**Action Number: 08-BOR-972**

**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 28, 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 May 27, 2008 on a timely appeal filed February 29, 2008. The hearing was originally scheduled for May 16, 2008, but was rescheduled at the request of the Department.

**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 daughter and Power of Attorney  
\_\_\_\_\_, Case Manager, Coordinating Council for Independent Living

**Telephonic participants**

Kay Ikerd, RN, Bureau of Senior Services  
Betsy Carpenter, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, 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 proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver 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 February 7, 2008
- D-3 Notice of Potential Denial dated February 11, 2008
- D-4 Denial notice dated February 27, 2008

**Claimant's Exhibits:**

- C-1 Letter from Dr. [REDACTED]

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical reevaluation to determine if she continues to meet medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on February 7, 2008 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified four (4) qualifying deficits for the Claimant in the areas of physical assistance with bathing and grooming, incontinence of bladder and inability to vacate the building in the event of an emergency.

- 3) The Claimant was sent a Notice of Potential Denial on February 11, 2008 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. Additional information was submitted, however, the documentation did not change the PAS findings.
- 4) The Claimant was sent a denial notice on February 27, 2008 (D-4).
- 5) The Claimant has diagnoses of Alzheimer's dementia, coronary artery disease, osteoarthritis, diverticulitis, angina and incontinence. During the hearing, the Claimant's witnesses contended that additional deficits should be awarded in the following areas:

***One-person assistance with walking-*** The Claimant's daughter, who was unable to be present during the assessment, testified that the Claimant requires physical assistance to walk if she "goes any distance at all." She testified that her mother is wobbly and unsteady. The daughter testified that her mother had a bump on her forehead and a bruised hip from a fall on the day following the assessment. She provided a letter from Dr. [REDACTED] (C-1) which indicates that the Claimant has an unsteady gait and a history of frequent falls.

PAS comments indicate that the Claimant has a walker, but forgets to use it. During the assessment, the WVMi nurse recorded that the Claimant ambulated across the living room and back through the house without difficulty and without holding onto furniture or walls.

*The Claimant's physician has verified that the Claimant has an unsteady gait and a history of frequent falls, therefore it is reasonable to believe that she requires physical assistance with walking at times. One (1) additional deficit is awarded for one-person assistance with walking.*

***Physical assistance with eating-*** The Claimant's daughter testified that the Claimant is unable to prepare her meals, but can eat with utensils. She also testified that the Claimant's meat is cut up for her due to her arthritis and a fear that she will cut herself. The Claimant also does not remember when she has eaten.

The WVMi Nurse testified that food preparation is not considered in regard to physical assistance with eating. She testified that she observed the Claimant drinking coffee during the assessment and believes she is able to use utensils based on her grip and range of motion. The Claimant's daughter testified that her mother had been taking 800 milligrams of Ibuprofen for pain twice a day for two weeks prior to the assessment. She stated that this could account for the range of motion witnessed by the nurse.

*As a result of information provided during the hearing, one (1) additional deficit is awarded for physical assistance with eating. It is reasonable to believe that the Claimant must have her meat cut up due to her osteoarthritis.*

***Physical assistance with dressing-*** The Claimant's daughter testified that the Claimant would not get dressed or change her clothes without prompting. She also testified that she does not believe her mother could bend over and put on her socks/shoes. PAS comments indicate that, upon questioning by the case manager, the homemaker had reported assisting

the Claimant with dressing when needed, although sufficient, detailed information concerning the assistance was not noted.

PAS comments also indicate that the Claimant reported an ability to fasten her bra and put on her own socks and shoes. She had also reported being able to zip, button and snap independently.

*Information is insufficient to establish a deficit in the area of physical assistance with dressing.*

**Orientation-** The Claimant's daughter testified that her mother cannot keep track of dates and is not oriented. The case manager indicated that the Claimant believes her deceased husband lives upstairs and that she talks to him. He also indicated that the Claimant put her hands on the floor when asked to raise them above her head. The doctor's statement (C-1) indicates that the Claimant is not oriented to place and time.

The WVMI Nurse testified that the Claimant was rated as having intermittent disorientation on the PAS as the Claimant was aware of her name and location during the assessment. To receive a deficit in this area, the Claimant must be totally disoriented.

*While it is clear that the Claimant suffers significant disorientation due to her Alzheimer's dementia, evidence is insufficient to demonstrate that she is totally disoriented. Therefore, no deficit can be awarded in this area.*

**Inability to administer medication-** The Claimant's daughter testified that her mother would not take her medications (or would hide them) if she was not prompted. The daughter testified that she has to place medication in her mother's hand at times. The physician's statement (C-1) states that the Claimant is incapable of administering medication.

The WVMI Nurse testified that pills are not placed in the Claimant's mouth, therefore, the Claimant was rated as requiring prompting/supervision in this area and no deficit was awarded.

*Evidence is insufficient to establish a deficit in the area of medication administration as the Claimant is capable of taking medication with prompting/supervision.*

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

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 503.1.1 (D-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.
- 8) 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 is c) mentally unable 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

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 B (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 dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. The Claimant was awarded four (4) deficits on her February 2008 Aged/Disabled Waiver Program medical evaluation.

- 2) As a result of information provided during the hearing, two (2) additional deficits are awarded to the Claimant in the areas of one-person assistance with walking and physical assistance with eating. This brings the Claimant's total number of deficits to six (6).
- 3) The required deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The two (2) additional deficits awarded by the Hearing Officer should be considered when determining the Claimant's Level of Care.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 28<sup>th</sup> Day of May, 2008.**

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**Pamela L. Hinzman  
State Hearing Officer**