



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

January 22, 2010

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Attn: -----

**Re: ----- Case No.: 09-BOR-1190**

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the hearing held for ----- on November 19, 2009. -----hearing request was based on the Department of Health and Human Resources' proposal to terminate her 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. 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 501]

Information submitted at the hearing reveals that -----medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify her for the Aged/Disabled Home and Community Based Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate -----benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Mary McQuain, Esq., AG's Office  
Kay Ikerd, RN, BoSS

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

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**Claimant,**

v.

**Action Number: 09-BOR-1190**

**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 January 22, 2010 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 July 16, 2009 but was rescheduled when the Claimant secured legal counsel. The hearing was rescheduled to convene on September 17, 2009 but was continued due to the Claimant's illness. The Claimant's appeal was subsequently scheduled and convened on November 19, 2009 on a timely appeal filed April 29, 2009.

**II. PROGRAM PURPOSE:**

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

**III. PARTICIPANTS:**

-----, Counsel for Claimant

-----, Claimant

-----, CM, [REDACTED] (participated telephonically)

-----, Homemaker RN, [REDACTED]

-----, Homemaker, [REDACTED]

Kay Ikerd, RN, BoSS (participated telephonically)

Debra Lemasters, RN, WVMI (participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its proposal to terminate the Claimant's benefits and services provided through the Medicaid Aged/Disabled Home and Community-Based Waiver Services Program.

**V. APPLICABLE POLICY:**

Medicaid Aged/Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501  
Code of Federal Regulations 42 C.F.R. § 440.155 42 and C.F.R. § 441.302

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual, Section 501 and underlying federal regulations
- D-1a Change Log (no changes)
- D-1b Table of contents
- D-1c Introduction and Program Description
- D-1d Member Eligibility, § 501.3 (entire section)
- D-1e Member Responsibility, § 501.4
- D-1f Attachment 14, page 4 from PAS 2000
- D-1g 42 C.F.R. § 441.302(c)(ii)(2)(ii)
- D-1h 42 C.F.R. § 440.155
- D-2 Request for hearing (4/23/09)
- D-3 Notice of Termination (4/15/09) with page 6 of PAS attached (3/24/09)
- D-4 WVMi Independent Review, Pre –Admission Screening for Aged/Disabled Waiver Services, (-----, 3/24/09)
- D-5 West Virginia Medicaid Aged and Disabled Waiver Program Informed Consent and Release of Information (-----, 3/24/09)
- D-6 Letter to Dr. [REDACTED] with hand written response concerning ----- received 3/24/09
- D-7 Potential Denial (3/25/09)
- D-8 Notices of appointment on 3/24/09 to ----- and CCIL
- D-9 Medicaid Aged/Disabled Waiver Program Medical Necessity Evaluation Request (2/6/09)

**Claimant's Exhibits:**

- C-1 RN Assessment Form (----- 5/19/09)
- C-2 RN Assessment Form (----- 11/24/08)
- C-3 WVMi Independent Review, Pre –Admission Screening for Aged/Disabled Waiver Services, (-----, 4/3/08)

## VII. FINDINGS OF FACT:

- 1) On March 24, 2009, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged and Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-4, Pre-Admission Screening (PAS) completed on 3/24/09}.
- 2) On or about March 25, 2009, the Claimant was notified of Potential Denial (Exhibit D-7). 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, Chapter 501.3.2.

Based on your PAS you have deficiencies in only 3 areas – Vacate a Building, Bathing and Continence.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks. It should be noted that no additional information was received/reviewed.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated April 15, 2009 (Exhibit D-3). 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 – Vacate a Building, Bathing and Continence

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

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates three (3) deficits but indicated the medical assessment completed in March 2009 fails to identify five (5) functional deficits necessary to establish medical eligibility for participation in the ADW Program. In addition, if the Claimant disagreed with the medical assessment, the Claimant and her case management agency were provided an opportunity to submit additional medical documentation during the two-week period following the Potential Denial Notice (D-7), however, no information was submitted.
- 5) The Claimant contends that she remains medically eligible to participate in the ADW Program as she is also demonstrating functional deficits in Eating, Grooming, Dressing and Administering Medications. The Department's objection to the introduction of Exhibits C-1, C-2, and C-3 was noted and these documents have been given limited weight. Exhibit C-3 was allowed into evidence for historical purposes only and Exhibits C-1 and C-2, although outside the contemporaneous date of the PAS, provide nursing assessments by the homemaker nurse and rationale for homemaker services. It is noted, however, that medical conditions change and that the ADW Program requires annual recertification by the completion of a PAS by WVMI.
- 6) The following addresses findings specific to each of the contested areas:

**Eating** – The Claimant reported during the assessment that she was able to feed herself and cut her own food. The WVMI RN assessed the Claimant's grasp by completing a hand squeezing exercise and observed the Claimant use both hands to remove and put socks back on, as well as remove a clasp from her hair. -----, Homemaker RN, testified that her assessments (Exhibits C-1 and C-2, bottom of first page) rate the Claimant as a "SA," indicating supervision assistance in area of eating. Although "SA" is not an official rating (according to the directions directly above this section), RN Adase testified that the Claimant requires assistance with cutting certain types of foods, like meat. It is unclear, however, why the homemaker, homemaker nurse or case manager failed to report this assistance is required during the assessment. Based on the information reported, as well as the observations of the WVMI RN, the Claimant was properly assessed at a Level 1 (self/prompting) - no deficit can be awarded in eating.

**Grooming** – -----, Homemaker RN, testified that grooming is marked as requiring assistance on Exhibits C-1 and C-2 because the Claimant likes her hair blown dry and combed after a shower. It is unclear, however, if this grooming service is provided due to functional necessity or as a matter of convenience - no other grooming services were reported. There are no physical conditions noted that would adversely affect the Claimant's ability to complete grooming requirements and the Claimant demonstrated during the assessment that she could reach her head with both hands, remove her ponytail and run her fingers through her hair. While balance was reported to be a problem necessitating assistance with washing her hair in the shower, it was noted that the Claimant has a shower chair that can be used so that both hands would be available for washing her hair. The Claimant's toenails are usually cut by a podiatrist, however, the Claimant reported during the assessment, and reaffirmed in her testimony, that she could cut her toenails between doctor visits at the time of the assessment. The evidence demonstrates that the Claimant does not require physical assistance with grooming.

**Dressing** – -----, Homemaker RN, testified that the Claimant receives assistance with dressing after taking a shower because she often gets winded and is afraid of falling. As a result, the homemaker helps her dress after a shower. The evidence indicates that when physical assistance is provided, it is done as a matter of convenience to the Claimant as the Claimant reported during the assessment that she dresses herself and that she dressed herself on the morning of the assessment. She indicated that she no longer wears a bra and wears slip-on shoes when in the home. The Claimant reported she can put on her shirt; she sits on the bed to put on her pants; and demonstrated during the assessment that she can remove and put on her socks. It should also be noted that the information provided by the Claimant was not disputed by those present during the assessment. Based on the evidence, the Claimant does not require physical assistance to get dressed.

**Medication Administration** – In order to qualify for a deficit in this area, the individual must require a level of assistance greater than prompting and supervision – medications must be administered by someone other than the individual due to mental and/or physical limitations. The Claimant reported during the assessment that she removes her medication from the pill bottle and places the medication in her mouth. She further reported that she never forgets to take her medication. According to the Department, the Claimant’s statement was not disputed by the individuals appearing with the Claimant at her assessment. ----- testified that due to the Claimant’s tremors, the floor is routinely checked to see if medications may have been dropped, however, there was no testimony to indicate medication administration has historically been a problem. The Claimant testified that she knows what medication to take, when to take it, and gives herself two insulin shots every day. While the argument was presented to indicate the Claimant “might” drop a pill, and therefore require assistance with medication, this information, if substantiated, would not support the finding of a deficit. The evidence demonstrates the Claimant was properly assessed by the WVMi RN and a deficit cannot be awarded in medication administration.

7) Aged/Disabled Home and Community-Based Services Manual Section 501 (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.

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 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.

- 9) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 Medical Criteria: 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:  
(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) Medicaid policy requires that an individual must demonstrate 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 completed by WVMI in March 2009 – Vacate a Building, Bathing and Continence.
- 3) The matter before the Board of Review is whether or not the assessment completed by the WVMI RN in March 2009 was accurate based on the information known at the time [emphasis added]. While there were four potential functional deficits contested in the

Claimant's appeal (Eating, Grooming, Dressing and Medication Administration), grooming (washing and combing hair) is the only functional deficit reported/disputed by the Claimant and her representatives at the time of the assessment, and none of the disputed areas were contested in the two-week period following the Notice of Potential Denial. Witnesses testifying on behalf of the Claimant agree that inaccurate information was provided to the WVMI RN, yet nothing was done to correct the alleged inaccuracies during the assessment process. Ultimately, it is the responsibility of the Claimant and her representatives to provide accurate information at the time of the assessment, and not the responsibility of the Hearing Officer to reassess the Claimant's functional abilities with new information that was not made available to the WVMI RN. While all of the contested areas were reviewed to determine if WVMI failed to evaluate and/or consider reported/perceived functional deficits, the WVMI RN evaluated the area of grooming and appropriately determined that the Claimant is not demonstrating a functional deficit.

- 4) Whereas the Claimant demonstrates only three (3) 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 Department's proposal to terminate the Claimant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 22<sup>nd</sup> Day of January, 2010.**

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**Thomas E. Arnett  
State Hearing Officer  
Member, Board of Review**