



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
235 Barrett Street  
Grafton WV 26354  
April 19, 2005

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

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

\_\_\_\_\_  
West Union WV 26456

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 9, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue your benefits/services under the Medicaid, Aged/Disabled Title XIX (Home & Community Based) Waiver 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.

Medicaid, Aged/Disabled (HCB) Title XIX Waiver is granted to those individuals who continue to meet all eligibility requirements. 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. In order to medically qualify for Aged/Disabled Waiver services an individual must have a total of five (5) qualifying deficits in specific categories of nursing services. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b (11/1/03)].

The information which was submitted at your hearing failed to establish 5 qualifying deficits.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to discontinue your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the December 30, 2004 notification letter.

Sincerely,

Ron Anglin  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Libby Boggess, BoSS  
Oretta Keeney, WVMH  
[REDACTED] CM, [REDACTED] Co Senior Citizens

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

\_\_\_\_\_  
\_\_\_\_\_  
West Union WV 26456

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 13, 2005 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 March 9, 2005 on a timely appeal received by the State Hearings Officer January 20, 2005. All persons giving testimony were placed under oath.

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid Title XIX Waiver (HCB) 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 niece

\_\_\_\_\_, homemaker

\_\_\_\_\_, RN, \_\_\_\_\_ County Senior Citizens

\_\_\_\_\_, CM, \_\_\_\_\_ County Senior Citizens

Kay Ikerd, RN, BoSS, (by phone)

Heather Randolph, RN, WVMI (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the claimant was medically eligible for services under the Aged/Disabled Waiver (HCB) Program?

#### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual ' 570- 570.1

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

E-1- A/D Waiver Manual 560.1- 570.1.b

E-2- WVMl Independent Review (PAS) 10/15/04

E-3- Notification 12/6/04 (Potential Denial)

E-4- Notification, 12/30/04(Termination)

C-1- Statement from Dr [REDACTED] 12/16/04 and RN Assessment, 10/20/04- response to E-3.

C-2- Presented at hearing: Statement from Dr [REDACTED] 3/8/05. Statement from \_\_\_\_\_  
12/13/04

#### **VII. FINDINGS OF FACT:**

(1) The claimant=s A/D Waiver case was due for an annual review and a WVMl Independent Review (E-2) was completed by the WVMl on October 15, 2004. WVMl determined that the claimant was no longer medically eligible for Waiver services and a notification of potential closure was mailed December 6, 2004. Additional medical information was then submitted by the CMA December 16, 2005. A termination notification was then mailed to the claimant December 30, 2004. A hearing request dated January 4, 2005 was received by BMS January 05, 2005 and by the BOR/Hearings Officer January 20, 2005. The claimant was notified of the hearing in a notification dated January 21, 2005. The Agency requested that the hearing be rescheduled from the original February 9 proposed date. A notification was sent to the claimant February 2, 2005 rescheduling the hearing for March 9, 2005 and it was convened on that date.

(2) During the hearing Exhibits as noted in Section VI above were presented.

(3) Kay Ikerd provided information concerning waiver program policy and requirements from Exhibit E-1.

(4) Heather Randolph noted from the evaluation (E-2) which she completed 10/15/04 in the claimant=s home. Claimant found to be physically unable to vacate in an emergency. Under item 26, claimant had no qualifying deficits. Claimant only requires supervision/prompting with medication administration, which is not considered a deficit. Total deficits found were 1 while 5 are required.

(5) \_\_\_\_\_ testified claimant misused her medication and she has taken care of it since 10/03. In 9/04 Dr recommended NH care. She sets up claimant's medication. Claimant has hallucinations and cannot remember day to day activities. Claimant will need to go to a nursing facility without the program. Claimant's daughter is also on the program. Claimant has been on program 1 year. She receives SSI as and gets 93 hours of care.

(6) \_\_\_\_\_ testified that she provides care for both the claimant and her daughter- who lives in the home. Claimant has dementia. Sometimes helps her with bathing. In past has been mostly supervision. Claimant sponge bathes. There have been times when she dresses inappropriately and may forget to zip and button. She has been able to wash her hair and cut nails. She wears panty liners.

(7) \_\_\_\_\_ testified that she stated in 5/04 that claimant had diminished capacity to care for herself. Claimant needs transportation help and help with personal care and medication. At 6 month evaluation noted that claimant suspected person being in her home- hallucination.

(8) \_\_\_\_\_ testified that claimant has need for help with medication. Her gait is unsteady and she needs occasional assistance in transferring. Requires help with appropriate dressing- e.g. seasonal.

(9) C-2, statement by \_\_\_\_\_ of 12/13/04 states in part:  
\_\_\_\_\_ does her bathing while I am in the home so that if she would need help or fall or anything of the sort I would be there to help her. There have been some days \_\_\_\_\_ has forgotten how to put her clothes on and I have assisted her, but she does pretty well on her own on other days.

## **VIII. CONCLUSIONS OF LAW:**

(1) Aged/Disabled Home and Community Based Services Manual ' 570:  
Applicants must meet all of the following criteria to be eligible for the program:  
C. Be approved as medically eligible for NF level of care.

(2) Aged/Disabled Home and Community Based Services Manual ' 570.1.b. Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

A. # 24: Decubitus - Stage 3 or 4

B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) And b) are not considered deficits.

C. #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)

Grooming -- Level 2 or higher (physical assistance or more)

Dressing---- Level 2 or higher (physical assistance or more)

Continence - 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 assist in the home)

Walking ---- Level 3 or higher (one person or two person assist 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)

D. #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.

E. #28: The individual is not (c) capable of administering his/her own medications.

## **IX. DECISION:**

The agency acknowledged 1 qualifying deficit – vacating a building. Testimony offered established a qualifying deficit in medication administration; however evidence failed to support a finding of additional functional deficits rising to the level of fully qualifying.

In conclusion, evidence offered established only 2 qualifying deficits. Eligibility for the program requires 5 qualifying deficits. This number of deficits is required to demonstrate that an individual requires the level of care provided in a nursing facility or the Medicaid (HCB) Waiver Program. I am therefore ruling to **uphold** the action of the Agency to terminate benefits under the Medicaid Waiver Program as set forth in the December 30, 2004 notification.

The claimant's family is advised, with the aid of the case management agency, to seek personal care services from other care programs offering care at a level less than that of a nursing home.

## **X. RIGHT OF APPEAL:**

See Attachment.

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.