



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
235 Barrett Street  
Grafton WV 26354  
June 14, 2005

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 3, 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 submitted at your hearing established a minimum of 5 qualifying deficits, demonstrating that you require the *level of care* commonly provided in a nursing facility.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to discontinue your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the January 14, 2005 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, WVMI  
[REDACTED] Catholic Community Services

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

\_\_\_\_\_,

**Claimant,**

**Action Number 05-BOR- 4675**

**v.**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 14, 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 May 3, 2005 on a timely appeal requested January 25, 2005 and received by the State Hearings Officer February 23, 2005. All persons giving testimony were placed under oath. Benefits have continued.

**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:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Kay Ikerd, RN, Bureau of Senior Services (by phone)

Debbie LeMasters, RN, West Virginia Medical Institute (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 continues to be 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- WVMI Independent Review (PAS), 12/15/04

E-3- Notification 12/21/04 (Potential Denial)

E-4- Notification, 1/14/05 (Termination)

C-1- Statement from [REDACTED] 12/28/04

C-2- Statement [REDACTED] 3/9/05

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

(1) The claimant=s A/D Waiver case was due for an annual review and a WVMI Independent Review (E-2) was completed by the WVMI on December 15, 2004. WVMI determined that the claimant was no longer medically eligible for Waiver services and a notification of potential closure was mailed December 21, 2004. Additional information was submitted December 29, 2004 (C-1). A termination notification was then mailed to the claimant January 14, 2005. A hearing request dated January 21, 2004 was received by the Bureau for Medical Services (BMS) January 25, 2005 and by the BOR/Hearings Officer February 23, 2005. The claimant was notified of the hearing date in a notification dated February 25, 2005. The hearing was convened May 3, 2005. Benefits have been continued pending a hearing decision.

(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) Debbie LeMasters noted the following from the evaluation (E-2) which she completed 12/15/04 in the claimant's home. Claimant found to be physically unable to vacate in an emergency. Under item #26, claimant had qualifying deficits in grooming and continence. Total deficits 3.

(5) \_\_\_\_\_ testified that her mother has a problem admitting she needs help out of fear she will be sent to a nursing home. Her mother needs help bathing- she cannot get in and out of the tub by herself. She needs help with everything. She is not stable in the bath. She cannot walk alone outside. She uses a 3 wheel walker all the time. Some days she needs help getting into walker. She needs help dressing. She has a bad shoulder which hinders her raising her arm. She is too unstable to dress herself alone as she must hold on to something to stabilize herself. She is sometimes disoriented. She needs assistance to sit and stand on occasion. Has question as to her ability to self-medicate. There have been occasions when she has not gotten the dosages correct.

(6) \_\_\_\_\_ testified that she undresses and helps claimant into bath- washes her shoulders, legs and feet. Helps her from bath and dries her. Then dresses her with little help from the claimant. Cannot handle buttons and zippers. Had only been with claimant about 2 weeks when evaluation took place and situation has declined since she arrived. Claimant took an overdose of blood pressure medication so she questions her ability to self-medicate.

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

(1) Aged/Disabled Home and Community Based Services Manual ' 570 reveals that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility 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 assessment elements on the medical evaluation- Decubitus - Stage 3 or 4; in the event of an emergency, the individual ability to vacate a building; functional abilities of individual in the home (eating, bathing, grooming, dressing, continence, orientation, transferring, walking, wheeling); skilled needs; and ability to self-administer medication. (See part IX below)

## **IX. DECISION:**

The agency acknowledged 3 qualifying deficits – ability to vacate a building (in an emergency), grooming and continence. Evidence provided as to the claimant's ability to bathe and dress independently- indicate that substantial deficits exist in both categories. The claimant's daughter and care provider both testified that the claimant requires assistance with both bathing and dressing- she requires assistance getting in and out of the bath and washing of shoulders, legs and feet. She is unable to dress independently and cannot manage buttons and zippers. Additionally, it appears that medication administration is in doubt as the claimant has on occasion taken incorrect dosages. Her impaired vision and orientation seem to account for this problem

In conclusion, evidence offered established 5 and possibly 6 qualifying deficits. This number of deficits demonstrates that an individual requires the level of care provided in a nursing facility or the Medicaid (HCB) Waiver Program. I am therefore ruling to **reverse** the proposal of the Agency to terminate benefits under the Medicaid Waiver Program as set forth in the January 14, 2005 notification.

**X. RIGHT OF APPEAL:**

See Attachment.

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 14<sup>th</sup> Day of June, 2005**

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**Ron Anglin**  
**State Hearing Examiner**