



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Martha Yeager Walker
Secretary**

**Joe Manchin III
Governor**

**Board of Review
4190 West Washington Street
Charleston, West Virginia 25313
Email: raywoods@wvdhhr.org**

May 18, 2005

Dear Ms. _____;

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 30, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Aged and Disabled 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 and benefit levels for Aged and Disabled Waiver Services are determined based on current regulations. One of these regulations states:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.

E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT).

The information submitted at the hearing revealed: You do not meet the medical eligibility for continued services.

It is the decision of the State Hearing Officer to UPHOLD the action of the Department in this particular matter.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Linda Wright, RN - B o S S
Oretta Keeney, RN – W V M I

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

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 May 18, 2005 for Ms. _____.

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 scheduled for March 30, 2005, on a timely appeal filed February 23, 2005.

It should be noted here that, Ms. _____ was not receiving any benefits under the Aged and Disabled Waiver Program. A pre-hearing conference was not held between the parties. Ms. _____ did not have legal representation.

All persons giving testimony were placed under oath. A pre-hearing conference was not held between the parties.

II. PROGRAM PURPOSE

The program entitled Home and Community Based Services, is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request 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).

III. PARTICIPANTS

_____, Claimant

_____, Power of Attorney

Sue Bailey, RN – West Virginia Medical Institute (WVMI)

Linda Wright, RN - Bureau of Senior Services (BoSS)

Presiding at the hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and, a Member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

Does Ms. _____ meet the eligibility criteria for the Aged and Disabled Waiver Services Program?

V. APPLICABLE POLICY

WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- D-1 WV Provider Manual Chapters 570; 570.1; 570.1.a & 570.1.b
- D-2 PAS-2000 assessed 12/27/04
- D-3 Letter dated 01/28/05 from WVMI to Ms. _____ – Terminating Services
- D-4 Letter dated 01/07/05 from WVMI to Ms. _____ – Potential Denial
- D-5 Letter from Ms. _____ to WVMI with Additional Medicals Attached
- D-6 Memorandum dated 02/14/05 from BoSS to Ms. _____ – Hearing Exhibits
- D-7 Scheduling Notice dated 03/02/05
- D-8 Request for Hearing dated 01/20/05
- D-9 GroupWise Messages (2) re: Scheduling

VII. FINDINGS OF FACT

1) This issue involves the denial of services under the Home and Community Based Services Program. The assessment completed on December 27, 2004 indicates Ms. _____ does not meet the eligibility for services.

2) Mrs. Linda Wright, RN, reviewed the Aged and Disabled Waiver Program Eligibility Criteria.

3) Mrs. Sue Bailey, RN reviewed Ms. _____'s PAS-2000 assessed on December 27, 2004, in the following manner:

Question #24

Decubitus----- **Total = 0;**

Question #25

In the event of an emergency, the individual can vacate the building, Mentally Unable. **Total = 1**

Question #26:

- a. Eating - 1 **Total = 0**
- b. Bathing - 1 **Total = 0**

c. Dressing - 1	Total = 0	
d. Grooming -1	Total = 0	
e. Cont/Bladder - 1	Total = 0	
f. Cont/Bowel - 3	Total = 1	
g. Orientation - 1	Total = 0	
h. Transferring - 1	Total = 0	
i. Walking - 2	Total = 0	
j. Wheeling - 1	Total = 0	Total = 1

Question #27

None **Total = 0**

Question #28

The individual is capable of administering his own medications: With Prompting/Supervision.
Total = 0.

- 4) Ms. _____ had a total of two (2) deficits on the PAS-2000 assessed on December 27, 2004.
- 5) The West Virginia Medical Institute sent a letter of Potential Denial to Ms. _____ on January 7, 2005. The letter stated there were only two (2) deficits on the PAS. Ms. _____ was permitted to submit additional documentation within two weeks of the letter.
- 6) Ms. _____ sent a letter and was received by the WVMI on January 14, 2005. Letters from Ms. _____ were attached for review.
- 7) Ms. _____ completed a Request for Hearing on January 20, 2005
- 8) On January 28, 2005, the WVMI notified Ms. _____ that she had been denied for the Home and Community Based Services Program.

VIII. CONCLUSIONS OF LAW

WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.

- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

WV Provider Manual Chapter 570.1 MEDICAL ELIGIBILITY:

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

WV Provider Manual Chapter 570.1.a 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 ADW services receives an appropriate LOC that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

WV Provider Manual Chapter 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 persons assist in the home)
Walking - Level 3 or higher (one 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 - (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

E. #28: Individual is not capable of administering his/her own medications.

IX. DECISION

It is the decision of this State Hearing Officer to UPHOLD the action of the Department to deny the application for the Aged and Disabled Waiver Program. Ms. _____ had two (2) of the required five (5) deficits on the Assessment dated December 27, 2004. She does not meet the medical eligibility criteria for continued services.

The Department's action was proper and correct.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29