



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**227 Third St.**  
**Elkins, WV 26241**

**Joe Manchin III**  
**Governor**

**Martha Yeager Walker**  
**Secretary**

May 24, 2005

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 17, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and 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.

The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to 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. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b]

The information submitted at your hearing reveals that your medical condition requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community-Based Services Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

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

cc: Chairman, Board of Review  
WVMI  
BoSS  
CWVAS  
\_\_\_\_\_

**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 24, 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 convened on May 17, 2005 on a timely appeal filed February 7, 2005.

It should be noted here that benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending the results of the hearing.

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  
\_\_\_\_\_, Claimant's son  
[REDACTED] Case Manager, CWVAS  
[REDACTED]

Kay Ikerd, RN, BoSS (participating telephonically)

Judy Bolen, RN, WVMI (participating telephonically)  
Presiding at the hearing was Pamela L. Hinzman, 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 ' 560 & 570

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

Department=s exhibits

- D-1 Aged/Disabled Home and Community-Based Services Manual ' 560 & 570
- D-2 PAS 2000 assessment completed December 9, 2004
- D-3 Notice of Potential Denial dated December 21, 2004
- D-4 Termination notice dated January 28, 2005

Claimant's exhibits

- C-1 Letter from \_\_\_\_\_ dated December 29, 2004
- C-2 Letter from \_\_\_\_\_ dated December 29, 2004
- C-3 Letter from Dr. [REDACTED] dated December 24, 2004

#### **VII. FINDING OF FACTS:**

1. The Claimant=s Aged & Disabled Waiver case, hereinafter ADW, was undergoing an annual medical reevaluation to verify continued medical eligibility.
2. West Virginia Medical Institute completed a medical assessment (D-2) on December 9, 2004 and determined that the Claimant is no longer medically eligible to participate in the ADW Program.
3. The Claimant was notified of the potential denial on December 21, 2004 (D-3) and advised that she had two weeks to submit additional medical information.
4. On January 28, 2004, a termination notice (D-4) was sent to the Claimant.
5. Ms. Bolen reviewed the PAS 2000 (D-2) that she completed for the Claimant on December 9, 2004. She testified that her assessment of the Claimant revealed two (2) program qualifying deficits in the following areas of the PAS:

Question 25- Physically unable to vacate building in event of emergency  
Question 26e- Bladder incontinence

6. Mr. [REDACTED] and Mr. \_\_\_\_\_ contended that additional deficits should be awarded to the Claimant in the areas of bathing, dressing and grooming. Mr. [REDACTED] read from the PAS in which the Claimant, who did not have a homemaker on the date of the PAS completion, had reported that her homemaker in the past had helped her in and out of the shower. Mr. \_\_\_\_\_ indicated there were days when his mother did not bathe and would stay in bed all day due to her health condition, and that she was incapable of grooming herself on those days. He stated that relatives assisted her with bathing on some days when she was without homemaker services. Ms. \_\_\_\_\_ concurred.
7. The Claimant had submitted a statement from Dr. [REDACTED] dated December 24, 2004 (C-3) which stated:

I have been treating \_\_\_\_\_ for a malfunction of the liver since December 21, 2004. As of today, there is not a definite diagnosis of the problem. Ms. \_\_\_\_\_ was hospitalized from December 21-December 24, 2004 for testing and rest. Ms. \_\_\_\_\_ suffers from jaundice, nausea, lack of appetite, lack of strength, and incontinence. It is my opinion that she needs assistance with dressing, walking, bathing, grooming and with transfers.
8. Ms. \_\_\_\_\_ testified that Ms. Bolen assisted her in ambulating out of the building on the date of the PAS completion, however Ms. Bolen refuted that information and stated the Claimant ambulated independently on the date of the assessment. Ms. \_\_\_\_\_ agreed that she did walk around her apartment independently on the date of the assessment.
9. Aged/Disabled Home and Community-Based Services Manual ' 570 (D-1) - Program Eligibility for client:  
Applicants for the ADW Program must meet all of the following criteria to be eligible for the Program:
  - C. Be approved as medically eligible for NF level of care.
10. Aged/Disabled Home and Community-Based Services Manual ' 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.
11. Aged/Disabled Home and Community-Based Services Manual ' 570.1.b. - *Medical Criteria*:

An individual must have five (5) 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.

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

As a result of testimony presented by the Claimant and her witnesses, additional deficits are awarded in the areas of bathing, dressing and grooming. Testimony revealed that the Claimant did not have homemaker services in place on the date the PAS was completed and her health condition prohibited her from completing these tasks on certain days because she had no physical assistance. It is reasonable that the Claimant had no choice but to complete these tasks to the best of her ability on certain days, however this does not indicate that the tasks were completed safely or adequately in the absence of physical assistance. Information on the PAS indicates the Claimant reported that she had fallen when getting out of the shower on her own.

Documentation from Dr. [REDACTED] which was provided by the Claimant within the two-week time period for the submission of additional information following the potential denial, indicates that the Claimant requires assistance with bathing, dressing and grooming.

The three additional deficits bring the Claimant's total deficits to five, the required number for continued medical eligibility for the Aged/Disabled Waiver Program.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's benefits and services under the Aged/Disabled, Title XIX (HCB) Waiver Program.

**X. RIGHT OF APPEAL**

See Attachment.

**XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.