



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
150 Maplewood Avenue  
Lewisburg, WV 24901**

**Joe Manchin III  
Governor**

**Martha Yeager Walker  
Secretary**

December 8, 2005

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 13, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) 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 Home and Community Based Services Waiver (ADW) Program is based on current policy and regulations. Some of these regulations state as follows: 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 PAS. (Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003)

The information which was submitted at your hearing revealed that you do meet the medical criteria for the ADW Program.

It is the decision of the State Hearing Officer to reverse the proposal of the Department to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program.

Sincerely,

Margaret M. Mann  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Libby Boggess, BoSS  
Oretta Keeney, WVMH  
[REDACTED] CCIL

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

\_\_\_\_\_,

**Claimant.**

**v.**

**Action Number: 05-BOR-5970**

**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 September 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 September 13, 2005 on a timely appeal, filed June 10, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

### **III. PARTICIPANTS:**

[REDACTED], Claimant  
[REDACTED] CM, CCIL  
[REDACTED] RN. Pro Careers  
[REDACTED] Homemaker  
Kay Ikerd, RN. BoSS (By Telephone)  
Judy Bolen, RN, WVMi (By Telephone)

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

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

The question(s) to be decided is whether the claimant continues to meet the medical requirements needed to receive ADW services.

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

Sections 570, 570.1, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual

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

#### **Department's Exhibits:**

- D-1 Sections 570, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003
- D-2 PAS-2000 dated 04/28/2005
- D-3 Potential Denial Letter dated 05/06/2005
- D-4 Termination Notice dated 06/07/2005

#### **Claimant's Exhibits:**

- C-1 Claimant's Summary
- C-2 Plan of Care
- C-3 Statement from [REDACTED]
- C-4 Statement from [REDACTED]
- C-5 Statement from POA

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

- 1) The claimant is a recipient of ADW services.

- 2) A review of medical eligibility was completed on 04/28/2005. Four deficits were found, The deficits found were physical assistance with bathing and dressing, bladder incontinence and mentally unable to evacuate the building in the event of an emergency. (D-2)
- 3) The claimant was notified of potential case closure in a letter dated 05/06/2005. (D-3) A letter of termination was issued 06/07/2005. (D-4) The claimant requested a hearing on this issue.
- 4) The claimant disagrees with the findings for eating, walking, medication administration and grooming. The claimant disagrees with the finding of eating as her homemaker prepares her meals. She feels she should have received a point for walking as she uses her walker when she is dizzy or when her ankle hurts. The claimant has to be reminded to take her meds. She feels she should have received a point for grooming as she needs assistance at times with her hair and the filing of her nails. The claimant uses clippers (nail) at times. On average, the claimant uses her walker one time a week. She did not walk when the nurse was there for the assessment. She stood up and sat back down.
- 5) Testimony from Ms. Bolen revealed that meal preparation is not included as a deficit under eating. It is the ability of the client to cut up meat. The claimant reported at the time of the assessment she was able to do that. The client was able to ambulate independently. Policy allows a deficit for medication administration when the client is physically unable to take their medication. Medication has to be placed in the client's mouth. The claimant was given credit for supervision under medication administration. The client related to Ms. Bolen at the time of the assessment she was able to wash her own hair when she took a shower. The client stated at the time of the assessment she was able to wash her hair, file fingernails, and do her own mouth care. The assessment was reviewed with the claimant.
- 6) The Department contends that grooming entails the basics of hair care. Can you wash it and comb it? Testimony revealed the claimant's homemaker does style the claimant's hair at times.
- 7) Section 570 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

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.
  - 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.
- 8) Section 570.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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

Program.

- 9) Section 570.1.a of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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 level of care (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.

- 10) Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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.

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

- 1) An individual must have five deficits on the PAS-2000 to qualify medically for the ADW Program. These deficits are determined from a combination of elements on the PAS-2000.
- 2) Four deficits were established at the time of the PAS review on 04/28/05. Those were physical assistance with bathing and dressing, bladder incontinence and mentally unable to vacate the building in the event of an emergency.
- 3) Policy is clear that in order to receive a point for grooming, the claimant must be Level 2 or higher – need physical assistance or more.
- 4) Evidence received at the hearing supports the finding that the claimant needs some physical assistance at times with grooming. This would add another point bringing the total deficits to five.
- 5) The claimant meets the medical eligibility criteria by having five deficits..

## **IX. DECISION:**

It is the finding of the State Hearing Officer that the claimant meets the medical criteria for the ADW Program. The Department is reversed in the decision to terminate the claimant's benefits under the Aged/Disabled Home and Community-Based Services Waiver (ADW) Program. The action described in the notification letter dated June 7, 2005 will not be taken. The case will be reviewed as policy dictates.

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

See Attachment

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 8th Day of December, 2005.**

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**Margaret M. Mann  
State Hearing Officer**