



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review

Joe Manchin III  
Governor

235 Barrett Street  
Grafton WV 26354  
August 1, 2006

Martha Yeager Walker  
Secretary

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 19, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits/services under the Medicaid, Aged/Disabled Title XIX (HCB 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)

The information submitted at your hearing established that you are 86 years of age and have been on the waiver program 5 years. While your condition has not improved, because of eligibility criteria implemented by the agency 11/1/05, you no longer qualify medically for participation in the waiver program. Evidence fails to establish 5 qualifying deficits based on the agency's most recent policy.

Based on evidence presented and current policy, the State Hearing Examiner must **uphold** the proposal of the agency to discontinue your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the January 20, 2006 notification.

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
\_\_\_\_\_, CM, \_\_\_\_\_ Senior Citizens  
Libby Bogges, BoSS  
\_\_\_\_\_, WVMI

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

\_\_\_\_\_

**Claimant**

**v.**

**Action Number 06- BOR- 1004**

**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 Examiner resulting from a fair hearing concluded on August 1, 2006 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 April 19, 2006 on a timely appeal requested January 30, 2006.

**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.

## **II. PARTICIPANTS:**

\_\_\_\_\_, son to claimant

\_\_\_\_\_, daughter to claimant

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

\_\_\_\_\_, granddaughter to claimant

\_\_\_\_\_, CM, Lewis Senior Citizens

\_\_\_\_\_, RN, Lewis Senior Citizens

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

\_\_\_\_\_, RN, West Virginia Medical Institute (by phone)

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

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

The question to be decided is whether the claimant is 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.b

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

E-1- A/D Waiver Manual 503- 570.1.b

E-2- WVMi Independent Review (PAS) 12/20/05

E-3- Notification 12/23/05 (Potential Denial)

E-4- Notification, 1/20/06 (Termination/Denial)

E-5- Additional documentation received per CMA, 1/10/06

C-1- RN Assessment- CMA- RN 1/18/06

C-2- CMA, Plan of Care, 1/18/06- 7/31/06

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

1) The claimant is an active recipient of benefits under the Medicaid, Title XIX, Aged and Disabled Waiver Program and a medical evaluation was completed by WVMi (E-2) on December 20, 2005. WVMi determined that the claimant was no longer medically eligible for Waiver services and a notification of potential denial was mailed December 23. A termination/denial notice was then mailed to the claimant January 20, 2006. This notice noted that only one of the required 5 deficits were met- grooming.

2) A hearing request dated January 25, 2005 was received by BMS January 30, 2006 and by this examiner March 6, 2006. The claimant was notified of the hearing date of April 19, 2006 in a notification dated March 27, 2006. The hearing was convened as scheduled.

- 3) During the hearing, Exhibits as noted in Section VI above were presented.
  - 4) Testimony was heard from the individuals listed in section III above. All persons giving testimony were placed under oath.
  - 5) The agency acknowledged by way of the testimony of the WVMi nurse and the evaluation of 12/20/05 a qualifying deficit only in *grooming*.
  - 6) Testimony offered on behalf of the claimant reveals that the claimant cannot prepare meals. Some of her food, meat for example, must be cut up. Claimant doesn't always dress appropriately to weather. Needs help picking out clothing. Needs help on occasion with bathing. Has bowel accidents on occasion. Doesn't use continence pads and sometimes soils clothing. Claimant's son sets up medication. Claimant can take some of her medication with only prompting at 8 and 4 o'clock. Is disoriented when outside and sometimes in the home.
  - 7) The Aged/Disabled Home and Community Based Services Manual § 580.2.b states in part: All clients must be evaluated at least annually in order to confirm their medical eligibility for continued services and to establish the LOC (level of Care) they require.
  - 8) The 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.
  - 9) The 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; ability to vacate a building\*; functional abilities of individual in the home – eating (*physical assistance to get nourishment, not preparation*) bathing, grooming, dressing (all Level 2 or higher - physical assistance or more), continence\* (Level 3 or more- must be total incontinent; orientation, transferring, walking, wheeling\* (all Level 3 or higher- personal assistance); skilled needs; ability to self-medicate\*.
- \* Vacating a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimer's, or related conditions
- \* Incontinence- defined as when the recipient has no control of bowel or bladder functions at any time
- \* Wheeling- 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.
- \* Ability to self medicate-A person is incapable of self medicating if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

## VIII. CONCLUSIONS OF LAW:

- 1) Policy relating to the Aged/Disabled Home and Community Based Services program directs that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care. Continuing eligibility

is determined based on an assessment of the individual's functional ability in a number of designated elements pertaining to the activities of daily living. Evidence reveals that such an evaluation was completed by the West Virginia Medical Institute on December 20, 2005. This evaluation found 1 qualifying deficit in the category of **grooming**.

2) Deficits are derived from a combination of the aforementioned assessment elements (VII #11). Among these are *eating* which in order to be considered a deficit requires that assistance must be provided for the individual to get nourishment. Evidence reveals that the claimant's meat must be cut up for her. Therefore, she requires assistance to get nourishment. Evidence establishes a qualifying deficit in **Eating**.

3) In order to determine a qualifying deficit in the category of *bathing* it must be shown that the recipient has requires some physical assistance. Evidence reveals that the homemaker provides assistance at least on an occasional basis. Evidence therefore establishes a qualifying deficit in **Bathing**.

4) Policy provides that an individual must have a minimum of five deficits to qualify medically for the ADW Program. The agency credited the claimant with 1 deficit - grooming. Evidence offered during the hearing established only 2 additional qualifying deficits for a total of 3. The 5 deficit threshold was not reached.

## **IX. DECISION:**

The agency's determination as set forth in the December 20, 2005 notification is **upheld**.

The agency acknowledged 1 qualifying deficit. Evidence established 2 additional qualifying deficits. A degree of deficit is apparent in several other categories- continence, orientation and dressing- however evidence fails to establish that limitations in these categories rise to the level of qualifying deficits.

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

See Attachment.

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 1st Day of August, 2006**

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

**CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION**  
**For**  
**Public Assistance Hearings,**  
**Administrative Disqualification Hearings, and**  
**Child Support Enforcement Hearings**

**A. CIRCUIT COURT**

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

**B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of health and Human Services, Washington, D.C. 20201.

**C. THE UNITED STATE DEPARTMENT OF AGRICULTURE**

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.