



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 10, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 14, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to deny eligibility for services under the Aged Disabled Waiver, A/DW, 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 A/DW program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged/Disabled (HCB) Services Manual 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the November 10, 2005 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to deny medical eligibility for services under the A/DW program.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Bogges, BoSS

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 06-BOR-1221**

**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 June 14, 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 June 14, 2006 on a timely appeal, filed January 10, 2006.

**II. PROGRAM PURPOSE:**

The Program entitled Aged Disabled Waiver 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's Witnesses:  
\_\_\_\_\_, claimant

Department's Witnesses:  
Libby Boggess, Bureau of Senior Services by speakerphone  
\_\_\_\_\_, WVMI nurse by speakerphone

Presiding at the Hearing was Sharon K. Yoho, 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 Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Service **Manual §570**

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community based Services Manual §570, 570.1 a,b.
- D-2 Pre-Admission Screening, PAS, completed November 10, 2005
- D-3 Eligibility Determination dated November 10, 2005
- D-4 Notice of potential denial dated December 6, 2005
- D-5 Notice of termination dated December 21, 2005

**VII. FINDINGS OF FACT:**

- 1) Ms. \_\_\_\_\_ is a 52-year-old female. She applied for services under the Aged Disabled Waiver Program, which prompted a Pre Admission Screening (PAS) to be completed by a WV Medical Institute nurse on November 10, 2005.
- 2) This PAS determined that Ms. \_\_\_\_\_ had four (4) qualifying deficits. These deficits were in the areas of bathing, grooming, dressing and transferring.
- 3) The claimant raised issues regarding walking, vacating, eating and orientation.
- 4) Ms. \_\_\_\_\_ has primary diagnosis of Lumbar Radiculopathy, Functional 2 to pain and Lumbar Spondylosis.
- 5) The claimant experiences pain with most movements. She reported to the evaluating nurse that she could walk unassisted in her home, but requires assistance outside of the

home for ambulation. She could not understand why needing assistance outside the home could not be considered.

- 6) Ms. \_\_\_\_\_ is concerned that she could have problems at a given point in vacating the home if there were an emergency.
- 7) The claimant testified that on some days when her pain is severe, she is not able to stand to cook her meals.
- 8) When the claimant is in severe pain or under the affects of excessive pain medication, she is not completely oriented.
- 9) Ms. \_\_\_\_\_'s predominant issue during the hearing was her objections to the policy restrictions.
- 10) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1) - Program Eligibility for client:

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

C. Be approved as medically eligible for NF Level of Care.

- 11) Aged/Disabled Home and Community-Based Services Manual Section 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 A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
  - C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.
- 12) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

A. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

B. Unable to vacate 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, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).

- 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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
- 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 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. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications 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) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMi nurse assigned the claimant only four (4) qualifying deficits in the areas of dressing, grooming, bathing and transferring.
- 2) The issue raised at the hearing was in the areas of walking, vacating, eating and orientation. It could not be concluded by testimony and evidence that this claimant needs hands on assistance inside the home with walking. She is not totally disoriented to person, place and time except intermittently. Since she is not at a level 3 for walking or for orientation policy will not permit a deficit for vacating. Testimony only indicated that assistance is needed for meal preparation and not for the actual act of eating.

- 3) This claimant is not medically eligible for the AD/W program. She is not in need of the level of care provided in a nursing facility.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse correctly assessed the claimant with four (4) qualifying deficits at the PAS. With the authority granted to me by the WV State Board of Review, I am ruling to **uphold** the Agency's proposed action to deny this claimant's services under the Aged/Disabled Title XIX (HCB) Waiver program

**IX. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 10<sup>th</sup> Day of July 2006.**

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**Sharon K. Yoho**  
**State Hearing Officer**