



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

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 13, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 25, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services received through 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 (11/1/03)].

The information which was submitted at your hearing reveals that your medical condition does not require 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 **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
\_\_\_\_\_, WVMH  
Libby Boggess, BoSS  
\_\_\_\_\_, First Care Services, Inc.

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 06-BOR-1653**

**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 July 25, 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 July 25, 2006 on a timely appeal filed April 12, 2006.

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

**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  
\_\_\_\_\_, Case Manager, First Care Services, Inc.  
\_\_\_\_\_, RN Supervisor, Pro Careers  
\_\_\_\_\_, Homemaker, Pro Careers  
\_\_\_\_\_, Economic Service Worker, DHHR  
\_\_\_\_\_, RN, WVMi (By Telephone)  
Libby Boggess, RN, BoSS (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 to be decided is whether the claimant continues to be medically eligible for benefits and services provided through the Medicaid, Aged/Disabled Waiver (HCB) Program.

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

Aged/Disabled Home and Community Based Services Manual 570.

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

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

- D-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
- D-2 Medical Assessment, PAS-2005, completed on 02/14/2006 and statement from Dr. \_\_\_\_\_ dated 03/08/2006
- D-3 Notice of Potential Denial from WVMi dated 02/27/2006
- D-4 Notice of Termination/Denial Notice dated 04/05/2006

#### **Claimant's Exhibit:**

- C-1 Statement from Dr. Edward M. \_\_\_\_\_ dated 07/13/2006

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

- 1) On February 14, 2006 the claimant was reevaluated (medically assessed) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW, and to confirm the appropriate Level of Care. Those present for the assessment were the claimant and her case manager, \_\_\_\_\_.
- 2) The medical assessment (D-2) completed by WVMi determined that the claimant is no longer medically eligible to participate in the ADW Program.
- 3) On February 27, 2006, a notice of Potential Denial (D-3), was sent to the claimant.

This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations. Based on your PAS you have deficiencies in only 4 areas. The areas in which deficiencies were found - Eating, Bathing, Grooming and Dressing.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

The claimant was notified that she could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final decision was made. Additional information was received from Dr. [REDACTED] but made no difference to the above determination. (D-2)

- 4) A termination notice (D-4) was sent to the claimant on April 5, 2006. This notice includes some of the following pertinent information:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate / deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 4 areas. The areas noted – Eating, Bathing, Grooming, and Dressing.

- 5) The claimant was 83 years of age at the time of the assessment. Her primary diagnoses are COPD with CRF, anorexia with muscle wasting, generalized weakness, pulmonary hypertension, chronic angina, arteriolosclerotic heart disease, sick sinus syndrome and breathing treatment.
- 6) Testimony from the claimant revealed she has problems with her lungs which results in her being short of breath, she has a pacemaker, and is unable to walk very far. She has a small apartment and is able to get around in the apartment by holding on to the furniture. She sits down if she gets too short of breath. She does not have a wheelchair because she would need someone to push her. She uses her inhalers in between her breathing treatments. She has been diagnosed with diabetes and controls it with her diet. She disagrees with the finding on the PAS about being physically able to vacate.
- 7) Testimony from Ms. [REDACTED] revealed that policy requires that an individual must be a Level 3 (one person assist) or higher in walking in order to receive a deficit for vacating. The claimant was assessed as using a supervised/assistive device for walking. It was noted the claimant was up in her home and used furniture to get around her home. The claimant did wear her oxygen at all times and was short of breath at times. The claimant stated there are times she gets dizzy while up walking.

- 8) Testimony from Ms. [REDACTED] revealed that the claimant is getting more unsteady on her feet with walking.
- 9) Testimony from Ms. [REDACTED] revealed that she has completed home visits with the claimant. She does not feel in her heart that the claimant could vacate in an emergency due to her breathing.

10) Aged/Disabled Home and Community Based Services Manual § 570 – 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.

11) 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.

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, Alzheimer's, 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) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 2) The medical assessment completed by WVMi reveals that the claimant demonstrates four (4) program qualifying deficits.
- 3) The claimant disagreed with finding for physical ability to vacate.
- 4) Policy reads as follows for able to vacate a building: a person is physically unable at all times at Level 3 or higher in walking.....The claimant was found to be a Level 2 for walking – supervised/assistive device. Testimony revealed that she uses the furniture to get around her home. No deficit can be awarded for walking as the claimant was correctly assessed as Level 2 – supervised/assistive device – for walking.
- 5) Whereas the claimant exhibits only four deficits in the specific categories of nursing services, the claimant's continued medical eligibility for participation in the Aged & Disabled Waiver Services Program is not established.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate the claimant's benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program. The action described in the notification letter dated April 5, 2006 will be taken.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 13th Day of September, 2006.**

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**Margaret M. Mann  
State Hearing Officer**