



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street West  
Charleston, WV 25313

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 12, 2006

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

**CORRECTED DECISION**

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 19, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your Aged and Disabled Waiver application.

In arriving at a decision, the State Hearings 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 and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows: 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. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in 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. Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT).

The information submitted at your hearing revealed: You do not meet the medical eligibility criteria for Waiver Services.

It is the decision of the State Hearings Officer to UPHOLD the ACTION of the Department to deny the Aged and Disabled Waiver application.

Sincerely,

Ray B. Woods, Jr., M.L.S.  
State Hearing Officer  
Member, State Board of Review

cc: Board of Review  
Kay Ikerd, RN – BoSS  
[REDACTED], RN – WVM  
[REDACTED], WVA

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

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

v.

**Action Number: 06-BOR-1659**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 12, 2006 for Mr. \_\_\_\_\_. 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 scheduled for July 19, 2006 on a timely appeal filed April 11, 2006.

It should be noted here that Mr. \_\_\_\_\_ was not receiving benefits at the time of the hearing. A pre-hearing conference was held between the parties, and Mr. \_\_\_\_\_ wanted to proceed with the hearing

**II. PROGRAM PURPOSE:**

The Program entitled Aged and Disabled Waiver Services 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

Teresa McDonough, Advocate – West Virginia Advocates (WVA)  
Friend

Kay Ikerd, RN – Bureau of Senior Services (BoSS)

\_\_\_\_\_, RN – West Virginia Medical Institute (WVMI)

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

### IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Does Mr. \_\_\_\_\_ meet the continued medical eligibility criteria for the Aged and Disabled Waiver Services Program?

### V. APPLICABLE POLICY:

WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*

### VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

#### Department's Exhibits:

- D-1 WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*
- D-2 PAS dated 02/07/06
- D-3 Termination/Denial Letter dated 02/27/06
- D-4 Potential Denial Letter dated 02/09/06
- D-5 Request for Hearing received by Bureau for Medical Services on 04/11/06
- D-6 Miscellaneous Hearing Documents

#### Claimants' Exhibits:

- C-1 Termination/Denial Letter dated 02/27/06
- C-2 PAS dated 02/07/06
- C-3 Letter from \_\_\_\_\_, M.D., dated 03/13/06

### VII. FINDINGS OF FACT:

1) This issue involves the denial of services under the Aged and Disabled Waiver Services Program. The assessment was completed on February 7, 2006 for Mr. \_\_\_\_\_. The primary diagnosis was listed as Failed Back Syndrome. Those present during the assessment were Mr. \_\_\_\_\_ and Ms. \_\_\_\_\_ RN of the West Virginia Medical Institute (Exhibit D-2 & C-1).

Ms. [REDACTED] determined through her evaluation that Mr. \_\_\_\_\_ only had four of the five required deficits for Waiver Services. The deficits were in the areas of: Eating; Bathing; Grooming and Dressing. It should be noted that the evaluation was based only on Mr. \_\_\_\_\_' functional levels on the day of the visit.

2) The West Virginia Medical Institute issued a Potential Denial Letter to Mr. \_\_\_\_\_ on February 9, 2006 (Exhibit D-4). According to the letter, Mr. \_\_\_\_\_ had deficiencies in 4 areas: Bathing; Dressing; Grooming and Dressing. Mr. \_\_\_\_\_ was given two weeks to provide any additional medical documentation for reconsideration.

3) Mr. \_\_\_\_\_ did not submit additional information and WVMI issued a Termination/Denial Letter on February 27, 2006 (Exhibit D-3).

4) Mr. \_\_\_\_\_ requested a fair hearing, and it was received by the Bureau for Medical Services on April 11, 2006 (Exhibit D-5).

5) At the hearing, Ms. Kay Ikerd, RN reviewed the ADW Policy (Exhibit D-1). A new policy went into effect November 1, 2005 that addressed how certain areas of the PAS would be evaluated.

6) At the hearing, Ms. [REDACTED], RN reviewed the PAS assessed on February 7, 2006 (Exhibit D-2).

7) The area of disagreement was in the area of Transferring, Walking, and Wheeling. Mr. \_\_\_\_\_ reported to Ms. [REDACTED] that he has fallen on several occasions. Mr. \_\_\_\_\_ testified that he falls when he tries to get in and out of bed. He estimated falling approximately 15 – 20 times from January 2006 through March 2006. The last fall occurred on Valentine's Day and an ambulance was called for assistance. He tried to get into bed and injured himself.

Mr. [REDACTED] has known Mr. \_\_\_\_\_ for several years. He testified that Mr. \_\_\_\_\_ has trouble Walking rather than Transferring. He only assists Mr. \_\_\_\_\_ at times with Transferring and Walking.

8) Mr. \_\_\_\_\_ testified that he is unable to use his wheelchair in the home. The living quarters are too small to manipulate a wheelchair. The letter from [REDACTED] M.D. (Exhibit C-3) states that Mr. \_\_\_\_\_ is becoming more reliant on the use of a wheelchair. The letter from Dr. [REDACTED] does not state Mr. [REDACTED] is wheelchair bound within the home. A deficit will not be awarded in this area.

9) Ms. [REDACTED] and Ms. Ikerd were given an opportunity to submit written closing statements. Both sides agreed to submit them to the State Hearing Officer by August 11, 2006. Ms. Ikerd submitted an e-mail to the State Hearing Officer on July 21, 2006 stating the State would not submit a written closing statement.

A decision was rendered on September 5, 2006 and incorrectly stated that Ms. [REDACTED] did not submit a Closing Statement. Ms. [REDACTED] did in fact submit a Closing Statement via e-mail on August 10, 2006. When writing the hearing decision, the State Hearing Officer did not refer to the e-mail messages and looked for a hard copy instead. After reviewing the Closing Argument, there was nothing within that would change the previous decision.

**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:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in 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.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

**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 § 570.1.b. -  
Medical Criteria:**

An individual must have five deficits on the PAS 2005 to qualify medically for the ADW 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 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. 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. (Item 26 on the PAS 2005)
- E. 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 some one other than the recipient at all times.

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

1) The Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria states in part, "An individual must have five deficits on the PAS to qualify medically for the ADW Program."

2) The policy for Wheeling, Transferring and Walking states in part:

Transferring must be a Level 3 or higher (one person or two persons assist in the home);

Walking must be a 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.)

3) The testimony and medical documentation does not support additional deficits in the areas of Walking, Transferring and Wheeling. Mr. Ott does not require a one and/or two person assistance at all times with Walking and Transferring. Also, there was no submitted documentation that Mr. Ott uses the wheelchair in the home at all times.

#### **IX. DECISION:**

It is the decision of this State Hearing Officer to UPHOLD the ACTION of the Department in this particular matter.

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

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 12th Day of September, 2006.**

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**Ray B. Woods, Jr., M.L.S.**  
**State Hearing Officer**