



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
State Capitol Complex, Building 6, Room 817-B
Charleston, WV 25305**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

January 17, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 15, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Aged/Disabled Waiver Program benefits.

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/Disabled Waiver Program is based on current policy and regulations. 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 revealed that you were not medically eligible for nursing facility care and thus for the Aged/Disabled Waiver Program

It is the decision of the State Hearings Officer to uphold the proposal of the Department to terminate your benefits under the Aged/Disabled Waiver Program.

Sincerely,

Erika H. Young
State Hearings Officer
Member, State Board of Review

cc: Board of Review
Libby Boggess, BoSS
[REDACTED], WVMI
[REDACTED], Catholic Community Services

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

_____,
Claimant

v.

Action Number: 05-BOR-5009

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

Respondent

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is the decision of the State Hearing Officer resulting from a fair hearing concluded on January 16, 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 15, 2005 on a timely appeal, filed February 18, 2005.

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

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Home and Community-Based 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
[REDACTED] Case Management Supervisor, Catholic Community Services
[REDACTED] Homemaker RN, Pro Careers
*Kay Ikerd, RN, Bureau of Senior Services
*[REDACTED], RN, West Virginia Medical Institute

Presiding at the Hearing was Erika H. Young, Chairman of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in its February 14, 2005 determination that Claimant was no longer medically eligible for the Aged/Disabled Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 560, 570, and 570.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual §§560, 570, and 570.1
- D-2 West Virginia Medical Institute Medical Necessity Reevaluation Request dated January 4, 2005
- D-3 Form PAS-2000 dated January 24, 2005
- D-4 Notice of Potential Denial dated January 28, 2005
- D-5 Notice of Termination/Denial dated February 14, 2005
- D-6 Claimant's Hearing Request dated February 16, 2005

VII. FINDINGS OF FACT:

1. Policy at Section 570 of the Aged/Disabled Waiver manual specifies that in order to be eligible for the Aged/Disabled Waiver Program a person must be approved as medically eligible for nursing facility level of care.
2. Medical eligibility is determined for the Department by the QIO West Virginia Medical Institute.
3. Medical eligibility is evaluated by use of form PAS-2000. The individual must have five deficits as specified on that form in order to be determined medically eligible for nursing facility level of care and thus for Aged/Disabled Waiver benefits. Section

570.1.b) The deficits are derived from a combination of the following assessment elements:

- 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 person assist in the home)

Walking ----- Level 3 or higher (one person or two 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: The individual is not (c) capable of administering his/her own medications.

- 4. On January 24, 2004, WVMI nurse [REDACTED] performed an assessment of medical eligibility for annual reevaluation of Claimant's eligibility for the Aged/Disabled Waiver Program. Ms. [REDACTED] determined at that assessment that Claimant had only one deficit and that was in the category of ability to vacate the building in an emergency. Ms. [REDACTED] determined that Claimant was physically unable to vacate the building because she lives on the sixth floor of a high rise and would not be able to descend the stairs in order to vacate.
- 5. Claimant testified that she had and continued to have some difficulty with putting rollers in her hair and that recently she had begun to require reminders with her medication.
- 6. Claimant testified that she fell in October 2004 when she was trying to get out of the bathtub. She testified that, as of the time of the hearing she was at times waiting until the homemaker was present to bathe but that she continued to do that without assistance.

7. No other testimony was given to dispute Ms. [REDACTED] findings in the January 2005 assessment.

VIII. CONCLUSIONS OF LAW:

1. In order to be medically eligible for nursing facility care and thus for the Aged/Disabled Waiver Program, a person must have five deficits.
2. Except for some difficulty with grooming tasks, the only deficit established for the claimant was in the area of vacating the building in an emergency. Claimant was unable to vacate her high-rise building in an emergency because she is on the sixth floor and could not descend the five flights of stairs without assistance.

IX. DECISION:

It is the finding of the Hearing Officer that Claimant was not medically eligible for nursing facility care in January 2005. It is the decision of the State Hearing Officer to uphold the proposed termination of Claimant's benefits under the Aged/Disabled Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this ____ Day of January 2006.

**Erika H. Young
State Hearing Officer**