



**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

February 2, 2006

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 27, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Aged and Disabled Waiver case.

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 meet the continued medical eligibility criteria for Waiver Services.

It is the decision of the State Hearings Officer to REVERSE the PROPOSAL of the Department to deny your Aged and Disabled Waiver case.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN – BoSS
[REDACTED], RN – WVMH
[REDACTED] Case Manager – All Care Home/Community Services

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

_____,

Claimant,

v.

Action Number: 05-BOR-6955

**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 February 2, 2006 for Mrs. _____. 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 on January 27, 2006 on a timely appeal filed December 13, 2005

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was not held between the parties and, Mrs. _____ did not have legal representation.

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

_____, Case Manager – All Care Home/Community Services

_____, RN – _____ Commission on Aging

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

_____, RN – West Virginia Medical Institute (WVMI)*

* Participated by conference call.

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 Ms. _____ 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 10/03/05 with Informed Consent
- D-3 PAS dated 10/03/05 with Informed Consent and, WVMI's comments dated 11/01/05
- D-4 Scheduling Notice dated 12/15/05
- D-5 Memorandum from BoSS re: Exhibits dated 12/06/05
- D-6 Request For Hearing dated 11/16/05
- D-7 Termination Notice dated 11/09/05
- D-8 Letter from Physician dated 10/21/05
- D-9 Letter of Potential Denial dated 10/11/05
- D-10 Miscellaneous Hearing Documents

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) This issue involves the denial of continued services under the Aged and Disabled Waiver Services Program. The re-evaluation assessment was completed on October 3, 2005, (Exhibit D-2), for Mrs. _____. Mrs. _____'s Primary Diagnoses were: Osteoarthritis and Spina

Bifida. Those present during the assessment were Mrs. ____; Mr. ____, Spouse; Ms. _____, Case Manager and; Ms. _____, R.N., of the West Virginia Medical Institute. Ms. _____ determined that Mrs. ____ had four (4) of the required five (5) deficiencies for continued services. The deficiencies were: Vacating a Building; Bathing; Dressing and; Continence. It should be noted that the determination was based solely on a single days visit.

The West Virginia Medical Institute sent a letter of Potential Denial, (D-9), to Mrs. ____ on October 11, 2005. The letter stated there were four (4) deficits on the PAS. Mrs. ____ was permitted to submit additional documentation within two weeks of the letter. The WVMI received a letter from Mrs. ____'s Physician dated October 21, 2005 (D-8). The Physician stated:

This letter is to inform you on why I checked Walking on _____'s Medical Eligibility Form. This patient has a brace do (sp.) to her legs being of unequal length. She also has Spina Bifida and uses a cane.

- 2) Ms. _____ reviewed the letter from Mrs. ____'s Physician on November 1, 2005 (D-3). Ms. _____ wrote, "PAS was received and at this time I have nothing further to add or change."
- 3) WVMI issued a Termination Letter to Mrs. ____ on November 9, 2005 (D-7). The letter stated in part, "Your PAS only indicated deficiencies in 4 areas."
- 4) Mrs. ____ completed a Request for Hearing, (D-6), which was received by the Bureau for Medical Services on November 16, 2005.
- 5) At the hearing, Ms. Kay Ikerd, R.N., of the Bureau of Senior Services explained the Aged and Disabled Waiver Policy. There were no questions for Ms. Ikerd.
- 6) Ms. _____ RN reviewed the PAS dated October 3, 2005.
- 7) The only area of concern was "Walking" as listed under Question #26: Ms. _____ had marked Mrs. ____'s ability to walk within the home as Level 2 - Supervised/Assistive Device. The functional levels for Walking are: Level 1 – Independent; Level 2 – Supervised/Assistive Device; Level 3 – 1 Person Assist and; Level 4 – Two Person Assist. According to Ms. _____'s testimony, a person would need a Level 3 to qualify for a deficit in Walking. Ms. _____ noted that Mrs. ____ walked from the recliner to the door and back.
- 8) The State Hearing Officer requested the Homemaker's Plan of Care for the period in question, to determine any assistance with Walking. Ms. Ikerd's objection was overruled.
- 9) Mrs. ____ testified that she requires assistance when walking in her home. She was able to walk to the door and back on the day of the evaluation. The distance is approximately five steps. She also uses her wheelchair in her home. According to Ms. _____ Overall Comments, Mrs. ____ states "She cannot use her wheelchair to get into her bathroom and she would use her cane for this and walk into the bathroom." **Mrs. ____ receives a deficit for Walking.**

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:

- * New applicants and existing clients are medically eligible based on current and accurate evaluations.
- * 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.
- * 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 to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. #24: Decubitus - Stage 3 or 4
- #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.
- B. #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)

C. #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.

#28: The individual is not (c) capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

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.”

Mrs. _____ receives an additional deficit for “Walking.” This gives her a total of five (5) deficits to meet the medical criteria for continued services. It should be noted that the Homemaker Agency did not submit the requested Plan of Care to the State Hearing Officer.

IX. DECISION:

It is the decision of this State Hearing Officer to REVERSE the PROPOSAL 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 2nd Day of February, 2006.

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