



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 13, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 7, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue 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 October 4, 2005 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the proposed action of the Department to discontinue 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  
[REDACTED] PHSS - Boggess, BoSS - [REDACTED] WVMI, [REDACTED] WVLSP

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

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

**v.**

**Action Number: 05-BOR-6994**

**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 7, 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 7, 2006 on a timely appeal, filed November 21, 2005.

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

**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  
\_\_\_\_\_, claimant's mother  
[REDACTED] case manager, PHSS

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone  
[REDACTED] WVMI nurse

Claimant's representative, [REDACTED], WVLSP

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 October 4, 2005
- D-3 Eligibility Determination dated October 4, 2005
- D-4 Notice of potential denial dated October 13, 2005
- D-5 Notice of termination dated November 17, 2005

**Claimant's Exhibits:**

- C-1 Letter from Doctor [REDACTED] dated October 21, 2005
- C-2 Letter from Dr. [REDACTED] dated May 1, 2006
- C-3 Letter from Dr. [REDACTED] dated March 30, 2006

**VII. FINDINGS OF FACT:**

- 1) Ms. \_\_\_\_\_ is a 33-year-old female. Her primary diagnosis is Metral Valve Prolapse, Blindness and Gastroesophageal Reflux Disease. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on October 4, 2005.

- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant, her homemaker and her case manager participating. The evaluating nurse determined that the claimant had only three (3) qualifying deficits. She assigned a deficit for Ms. \_\_\_\_\_'s need for physical assistance in bathing, grooming and dressing.
- 3) The claimant and her witnesses raised issues in the areas of walking, vacating and eating.
- 4) During the PAS, Ms. \_\_\_\_\_ was observed ambulating without the use of a device. Ms. \_\_\_\_\_ advised the nurse that she does not need the use of a device or furniture to hold to during walking. Testimony indicates that she needs help going up steps, but she did not have a need to go to the second floor of her home.
- 5) Ms. \_\_\_\_\_ has a condition of Labyrinthine Dysfunction associated with her blindness. Dr. [REDACTED] at WV University Health Associates saw her for severe disequilibrium problems on November 10, 2005. This condition causes fluid behind the ears. This condition was addressed during the PAS. The claimant becomes dizzy and disoriented as a result of this condition. She has panic attacks which were also addressed in the PAS. Ms. \_\_\_\_\_ is afraid that in the event of an emergency she could not successfully vacate because she would become disoriented due to either a panic attack or her equilibrium problem. Ms. \_\_\_\_\_ advised the evaluating nurse that she could vacate independently however, the nurse assessed her as needing supervision due to her panic attacks and visual deficit. Considering her panic attacks, her equilibrium problems along with her inability to see, she would require hands on assistance to guide her to a door for the purposes of successfully vacating in the event of an emergency.
- 6) The claimant advised the nurse at the evaluation that she could cut her own food most of the time but that her homemaker does this for her most of the time. She testified that she has problems finding the food on her plate and knows that using a sharp knife and attempting to cut her own food is dangerous. She states that she never cuts her own food; others always do it for her.
- 7) Aged/Disabled Home and Community Based Services Manual § 570 – Program Eligibility for Client:

Applicants for the A/DW 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 A/DW Program as an alternative to NF care.
- 8) 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 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.
- 9) 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 A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:
- 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 B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.

E. #28: The individual is not capable of administering his/her own medication.

## **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 three (3) qualifying deficits in the areas of bathing, dressing and grooming.
- 2) The issues raised at the hearing were in the areas of walking, vacating and eating.
- 3) Policy stipulates that if the client is either mental or physically unable to vacate the building in the event of an emergency without hands on assistance a deficit is assessed. Testimony and evidence supports that this claimant would require hands on assistance to safely vacate in the event of an emergency.
- 4) The claimant is not able to safely cut up her own food due to her blindness. Others always cut her food up for her she therefore should have been assessed a deficit for eating.
- 5) Evidence did not support that this claimant needs hands on assistance to walk around on a regular basis in her home. She ambulates independently without the use of a device or holding on to furniture.

## **IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse should have assessed the claimant with five (5) deficits including one (1) for vacating and one (1) for eating. With the authority granted to me by the WV State Board of Review, I am ruling to **reverse** the Agency's proposed action to discontinue this claimant's services under the Aged/Disabled Title XIX (HCB) Waiver

program and that the Department assesses the additional points for level of care associated with vacating and eating.

**IX. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 13th Day of July 2006.**

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