



**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

March 15, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 23, 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 close 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
Brian Holstein, LSW – BoSS
[REDACTED], RN – WVMH
[REDACTED] LSW/Case Manager

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

_____,
Claimant,

v.

Action Number: 05-BOR-7163

**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 March 15, 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 February 23, 2006 on a timely appeal filed January 25, 2006.

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, Mr. _____ 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

_____, Licensed Social Worker/Case Manager – Coordinating Council for Independent Living (CCIL)

_____ Homemaker – _____ Home Health

Brian Holstein, Licensed Social Worker – 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 11/01/05
- D-3 Letter of Potential Denial dated 11/09/05
- D-4 Letter from Physician dated 11/18/05
- D-5 Denial Letter dated 12/06/05
- D-6 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 November 1, 2005, (Exhibit D-2), for Mr. _____. Mr. _____'s Primary Diagnoses were: Foot Drop Left; Left Hemiparesis and Post CVA. Those present during the assessment were Mr. _____; Ms. _____, Homemaker, and Ms. _____ RN of the West Virginia Medical Institute. Ms. _____ determined that Mr. _____ had four (4) of the required five (5) deficiencies for

continued services. The deficiencies were: Eating; Bathing; Grooming and; Dressing. 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-3), to Mr. _____ on November 9, 2005. The letter stated there were four (4) deficits on the PAS. Mr. _____ was permitted to submit additional documentation within two weeks of the letter. The WVMI received a letter from Mr. _____'s Physician dated November 18, 2005 (D-4). The Physician stated in part:

I am writing in regards to my patient _____. I have been seeing him for hypertension, post stroke which caused him to be hemiplegic on the left with foot drop.

Because of the disability he needs help in eating, bathing, grooming, dressing, and walking. Patient is paralyzed on left side with foot drop which makes the above assistance extremely needed.

2) According to the Nurse's Overall Comments on the PAS dated November 1, 2005, Ms. _____ reviewed the letter from Mr. _____'s Physician on November 28, 2005 (D-2). Ms. Hill wrote,

Reviewed additional information from doctor and only states patient needs assist with eating, bathing, grooming, dressing and walking. On date assessed, nurse observed patient transferring and ambulating and did require assistance with cane at that time, ad did not require one person assist. All other areas were noted to need physical assist. Additional information did not change PAS.

3) WVMI issued a Termination Letter to Mr. _____ on December 6, 2005 (D-5). The letter stated in part, "Your PAS only indicated deficiencies in 4 areas."

4) Mr. _____ completed a Request for Hearing, (D-6), which was received by the Bureau for Medical Services on December 22, 2005.

5) At the hearing, Mr. Brian Holstein, LSW, of the Bureau of Senior Services explained the Aged and Disabled Waiver Policy. There were no questions for Mr. Holstein.

6) Ms. _____ RN reviewed the PAS dated November 1, 2005.

7) The only area of concern was "Walking" as listed under Question #26: _____ had marked Mr. _____'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. _____ testimony, "She observed Mr. _____ ambulating with a cane by himself."

8) Mr. _____ testified that he must use the walls and furniture to walk within the home. When the homemaker is not present, he usually stays in the bedroom until she returns.

9) Ms. _____ testified that she has worked with Mr. _____ for the past four (4) years, and knows that he requires one person assistance with walking. In addition, Mr. _____ uses a motorized wheel chair within the home. **This is credible testimony and Mr. _____ will receive 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:

- 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:

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."

Mr. _____ receives an additional deficit for "Walking." This gives him a total of five (5) deficits to meet the medical criteria for continued services.

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 15th Day of March, 2006.

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