



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
150 Maplewood Ave.  
Lewisburg, WV 24901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

May 25, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 4, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services received through the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver 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.

The Aged /Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to meet all eligibility requirements. 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 reveals that your medical condition does not require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Margaret M. Mann  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
[REDACTED] WVMI  
Libby Boggess, BoSS  
[REDACTED] First Care Services

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-7265**

**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 April 4, 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 April 4, 2006 on a timely appeal filed January 6, 2006.

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

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid Title XIX Waiver (HCB) 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:**

[REDACTED], Claimant  
[REDACTED], Case Manager, First Care Services Inc.  
[REDACTED], Homemaker, Pro Careers  
[REDACTED], RN, Pro Careers  
[REDACTED] RN, WVMI (By phone)  
Libby Boggess, RN, BoSS (By phone)

Presiding at the Hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the claimant continues to be medically eligible for benefits and services provided through the Medicaid, Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual 570.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
- D-2 Medical Assessment, PAS-2005, completed on December 12, 2005
- D-3 Notice of Potential Denial from WVMI dated 12/15/05
- D-4 Notice of Termination/Denial Notice dated 01/03/06

**VII. FINDINGS OF FACT:**

- 1) On December 12, 2005, the claimant was reevaluated (medically assessed) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW, and to confirm the appropriate Level of Care.
- 2) The medical assessment (exhibit D-2) completed by WVMI determined that the claimant is no longer medically eligible to participate in the ADW Program.
- 3) On December 13, 2005, a notice of Potential Denial (exhibit D-4), was sent to the claimant. This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations. Based on your PAS you have deficiencies in only 4 areas – Eating, Bathing, Grooming, and Dressing.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

The claimant was notified that she could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final decision was made. No additional documentation was received.

- 4) A termination notice (exhibit D-5) was sent to the claimant on January 3, 2006. This notice includes some of the following pertinent information:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate / deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 4 areas – Eating, Bathing, Grooming, and Dressing.

- 5) The claimant was 73 years of age at the time of the assessment. Her primary diagnoses per her physician were coronary artery disease, anxiety, hypothyroidism, COPD, hypertension, deep vein thrombosis, and headaches. The nurse who completed the PAS-2005, [REDACTED] RN, WVMI discussed the assessment. The claimant was assessed as less than total incontinence of bladder/bowel. The claimant reported having accidents with her bladder. She reported it is about a 50-50 chance that she makes it to the bathroom to empty her bladder. It is noted that the claimant reported there are times she does have accidents with her bowels. There are times she is able to make it to the bathroom with her bowels. The claimant was assessed as needing supervised/assistive device for transferring and walking. She wheels independently. The claimant needs inhalation therapy which does not count as a deficit. The claimant was assessed as being able to administer her own medications. The claimant's homemaker helps the claimant sort out her medications. The claimant does not meet the policy requirements under ability to vacate. Ms. [REDACTED] asked the claimant to demonstrate walking and transferring during the assessment. When it comes to transferring, the claimant was sitting at the table. She did push herself up from the chair, grabbed her walking stick and walked from the kitchen to the living room. She then turned around, came back and sat down. She notes that when she is up waking in the home, she has her walking stick in one hand and holds on the furniture with the other hand. At the time of the assessment, the homemaker was in the home three (3) days per week at seven (7) hours per day.
- 6) Ms. \_\_\_\_\_ testified that there have been some changes since the assessment was done. She is totally in diapers now. She was wearing diapers at the time of the assessment. Her homemaker helps her with her medication and helps her walk around the house.
- 7) Testimony from Ms. [REDACTED] revealed that the claimant lives alone and suffers from panic attacks. Also, she has been really self-destructive because of the fear of being left

alone. She is blind in the left eye and has shadow vision in the right eye. She has to have someone to cook for her as she is afraid to use the stove. The homemaker prepares extra food for her. She needs the homemaker's assistance when filling up her pillbox. She is having more trouble with continence.

8) Ms. [REDACTED] testified that in regard to the incontinence, when she comes in she finds the claimant has messed all over herself and the bathroom if she has made it there. The claimant does not try to shower on her own but tries to clean up after herself the best she can. She tries to change the bottoms. She is real short of breath. She does not get up too much when she is there. She is unsteady on her feet. She prepares food for the claimant ahead of time. She helps her put her medication in the box. She has noted the claimant's deterioration over the three years she has known her.

9) Testimony from Ms. [REDACTED] revealed she has known the claimant since 2002. The claimant is incontinent most of the time. Very rarely, can she make it to the bathroom in time.

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:

C. Be approved as medically eligible for NF level of care.

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 Section 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. 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, Alzheimer's, 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 person 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 B (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations. (Item 26 on the PAS 2005)

E. The 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 someone other than the recipient at all times.

## VIII. CONCLUSIONS OF LAW:

- 1) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 2) The medical assessment completed by WVMI reveals that the claimant demonstrates four (4) program qualifying deficits – Eating, Bathing, Grooming and Dressing.
- 3) The claimant was assessed as being less than total incontinence of bladder and bowel. The criteria used by WVMI is that the individual must be total incontinent – defined as when the recipient has no control of bowel or bladder functions at any time. The claimant reported during the assessment on December 12, 2005 having accidents with her bladder. She reported it is about a 50-50 chance that she makes it to the bathroom to empty her bladder. It is noted that the claimant reported there are times she does have accidents with her bowels. There are times she is able to make it to the bathroom with her bowels. Witnesses on behalf of the claimant spoke of her incontinence of bladder/bowel and relate that she rarely makes it to the bathroom in time. No point will be awarded for incontinence as the claimant must have no control of bowel or bladder functions at any time.

- 4) The claimant is able to administer her medication with supervision. Her homemaker helps her place her medication in her pillbox. Policy dictates that an individual is 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. No additional point will be awarded for medication administration.
- 5) The claimant was assessed as needing supervised/assistive device for walking in the home. The claimant demonstrated for the nurse her ability to get around her home by holding on to her walking stick with one hand and the furniture with her other hand. No additional point will be awarded for walking.
- 6) Whereas the claimant exhibits deficits in only four (4) of the specific categories of nursing services, the claimant's continued medical eligibility for participation in the Aged & Disabled Waiver Services Program is not established.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate the claimant's benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program. The action described in the notification letter dated January 3, 2006 will be taken.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 25th Day of May, 2006.**

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**Margaret M. Mann  
State Hearing Officer**