



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

June 12, 2006

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 20, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Aged/Disabled (HCB) Title XIX Waiver Services 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 Aged/Disabled Waiver 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 a 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 Section 570]

The information which was submitted at your hearing reveals that your medical condition no longer requires 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 under the Aged/Disabled Waiver Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Health Consultants Plus

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

____,

Claimant,

v.

Action Number: 06-BOR-883

**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 June 12, 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 20, 2006 on a timely appeal filed December 13, 2005.

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:

[REDACTED], Claimant
[REDACTED], Homemaker Aid, American Home Care
[REDACTED], RN, American Home Care
[REDACTED], RN, WVMi (participated telephonically)
Kay Ikerd, RN, BoSS (participated telephonically)

Presiding at the hearing was Thomas E. Arnett, 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 Agency is correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 570 and 500
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on November 2, 2005
- D-3 Notice of Potential Denial dated November 9, 2005
- D-3a Additional medical documentation – Fax cover letter from Dr. [REDACTED]'s agreeing with the medical assessment, pages 8, 9 & 10.
- D-4 Notice of Denial dated December 6, 2005.

Claimant's Exhibits:

- C-1 Written argument by [REDACTED], RN/CM dated 4/19/06.
- C-2 Written argument by [REDACTED], RN, dated 4/20/06

VII. FINDINGS OF FACT:

- 1) On November 2, 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 November 9, 2005, a notice of Potential Denial (exhibit D-3), 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 2 areas – Bathing and Grooming.

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

The Claimant was notified that additional information regarding her medical condition would be considered before a final decision is made if it is received within the next 2-weeks. Additional information was received and is identified as Exhibit D-3a.

- 4) A Termination/Denial notice (exhibit D-4) was sent to the Claimant on December 6, 2005. 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 2 areas – Bathing and Grooming.

- 5) The Claimant's representatives contend that the Claimant should have been awarded deficits eating, dressing, medication administration and vacating a building in the event of an emergency.
- 6) Testimony received in support of a deficit in eating reveals that the Claimant had a diagnosis of Bulimia when she was originally approved for the ADW Program in 2002. Additionally, the Claimant required surgery after suffering an esophageal tear during an episode of self-induced vomiting approximately six (6) years ago. Ms. [REDACTED] contends that while the Claimant is physically capable of eating, she requires encouragement and praise for completing a meal. There was also testimony to indicate that the Claimant's homemaker cuts up her food. The medical assessment (Exhibit D-2) completed by WVMi reveals that the Claimant has the ability to cut her own food and it was noted that Dr. [REDACTED] agreed with WVMi's findings in Exhibit D-3a, page 8 of 10. While it's clear that the Claimant has some difficulties related to eating, for the purpose of the ADW Program, only the Claimant's functional level can be considered. According to the evidence, the Claimant is functionally capable of *eating* independently.

- 7) The evidence indicates that the Claimant is able to dress independently. While it was noted that the homemaker helps the Claimant get dressed when she is present, the Claimant reported when the homemaker is not present - "I sit on the bed and do what I can. It takes me a while but I get it on." It should also be noted that the Claimant's physician agreed with the Department's findings as indicated by his signed/dated statement found on Page 9 of Exhibit D-3a. A deficit in ***dressing*** cannot be awarded.
- 8) In order for an individual to qualify for a deficit in Medication Administration, the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times. Evidence reveals that while the Claimant was receiving assistance with medication set-up at the time of the assessment, she was administering her medications independently. Based on the evidence, the Claimant does not qualify for a deficit in ***Medication Administration***.
- 9) Policy states that an individual who qualifies for a deficit in vacating is a person who 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. Evidence received in support of a deficit in vacating; "intermittent disorientation" and "Panic Disorder," fail to qualify the Claimant for a deficit under the current guidelines. A deficit in vacating cannot be established.
- 10) Aged/Disabled Home and Community-Based Services Manual Section 570 - Program Eligibility for client:

Applicants for the ADW Program must meet 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 Section 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.

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, 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 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) A medical assessment was completed on the Claimant to determine continued medical eligibility for participation in the Aged/Disabled Waiver Program on November 2, 2005.

- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 3) The medical assessment completed by WVMi reveals that the Claimant demonstrates two (2) program qualifying deficits – Bathing and Grooming.
- 4) Evidence submitted at the hearing established zero (0) additional deficits. While it was noted that the Claimant's homemaker cuts her food and assists her with dressing when she is there, the evidence fails to demonstrate that the Claimant is functionally unable to complete these tasks independently. The Claimant administered her own medications at the time of the assessment and she clearly does not meet the criteria required to establish a deficit in vacating.
- 5) Whereas the Claimant exhibits deficits in only two (2) of the specific categories of nursing services, the Claimant's continued medical eligibility for participation in the Aged & Disabled Waiver Services Program cannot be established.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th day of June, 2006.

**Thomas E. Arnett
State Hearing Officer**