



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
P.O. Box 970  
Danville, WV 25053

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 14, 2007

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 1, 2007. Your hearing request was based on the Department of Health and Human Resources' denial of your medical eligibility 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 503]

Information submitted at your hearing reveals that you do meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to deny your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl McKinney  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
CCIL

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

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

**v.**

**Action Number: 07-BOR-1044**

**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 August 1, 2007 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 August 1, 2007 on a timely appeal filed March 30, 2007.

It should be noted that this hearing was previously scheduled for June 14, 2007 and June 26, 2007. It was rescheduled once at the Department's request and once at the Claimant's request.

**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  
\_\_\_\_\_, Claimant's Homemaker, Pro-Careers

Kay Ikerd, BOSS, participated telephonically  
[REDACTED], WVMi, participated telephonically

Presiding at the hearing was Cheryl McKinney, 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 was correct in its proposal to deny benefits under the Aged/Disabled Home and Community-Based Waiver Program.

### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 503, 503.1, 503.1.1 and 503.2

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

#### **Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 503
- D-2 Pre-Admission Screening (PAS) assessment completed on January 29, 2007
- D-3 Notice of Potential Denial dated March 6, 2007 and letter from physician March 27, 2007
- D-4 Notice of Denial dated March 22, 2007

#### **Claimant's Exhibits:**

- C-1 Letter from physician dated July 31, 2007

### **VII. FINDINGS OF FACT:**

- 1) The Claimant was undergoing a re-evaluation of medical eligibility under the Title XIX Aged and Disabled Waiver Program.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on January 29, 2007 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified that the Claimant received three (3) deficits on the Pre-Admission Screening (PAS) assessment in the areas of bathing, grooming and continence.
- 3) The Department sent the Claimant a Notice of Potential Denial dated March 6, 2007 (D-3) and advised her that she had two weeks to submit additional medical information for consideration by WVMI. The Claimant submitted a letter (D-3) from one of her physicians dated March 27, 2007. The physician indicated in this letter that he feels the patient is deficient in two (2) other areas, those being dressing and administering medications. He went on to write:

The patient is on multiple medications for her many medical problems. Her psychiatric condition at times prevents her from taking her medication in the appropriate manner. The patient also stated to the nurse that she has difficulty putting on shirts and pants. This has been witnessed first-hand in our office by my medical assistant. [REDACTED] comes to the office once a week to receive an allergy injection. She has to have her shirtsleeve pulled off for her because she is unable to do so herself due to arthritis.

- 4) WVMI sent the Claimant a Notice of Denial (D-4) dated March 22, 2007.
- 5) The Claimant contended that additional deficits should be awarded in the following areas:

***Dressing:*** The Claimant was rated as needing self/prompting in this area. The Bureau of Senior Services testified that self/prompting indicates the patient needs reminding but can accomplish the task themselves. The WVMI nurse testified that during the assessment the homemaker indicated she only fastens the Claimant's bra, and occasionally helps with her lifting her shirt over her head. The nurse also testified that when making assessments of needs, she does not assess someone as needing assistance based on "occasional" needs for assistance. She stated she based her decision on the "usual" circumstances. The nurse entered notes on the Pre-Admission Screening (PAS). In the area of "dressing" she wrote:

Hm states she fastens her bra only. Hm states occasionally she does assist her with pulling her shirts over her head. Member states she has to sit down to put her pants on. Hm states the member can put her shoes and socks on without assistance.

The Claimant testified that she has arthritis and has difficulty with dressing and needs assistance often.

- 6) ***Eating:*** The Claimant was rated as needing self/prompting. The WVMi nurse noted on the Pre-Admission Screening (PAS) the following:

Member states she can use her knife, fork and spoon without assistance. Hm states she does not need any assistance with eating. The member states she cannot cut her steaks. I did do hand grips with both hands. The right hand grip was strong and the left hand grip was slightly weaker. States she does need assistance with preparing her meals.

The WVMi nurse testified that she made the assessment that the claimant needed only prompting for eating based on her above comments during the Pre-Admission Screening (PAS), and her performance with the hand grips. The nurse stated the hand grips did not have a digital readout as to the strength in the Claimant's hands. She determined the grip strength based on her observations and her nurse's training. The Claimant testified that she did not fully understand what the nurse was asking when responding to questions in this area. She stated that she could not cut up her meats, and use a knife. She stated she could place food in her mouth herself, but could not cut the food herself. The Claimant stated she has arthritis and has had seven (7) operations on her left hand and has very limited use of her arms.

- 7) ***Medication Administration:*** The Claimant was rated as capable of administering her own medications. The WVMi nurse noted on the Pre-Admission Screening (PAS) that the Claimant stated she takes her medication out of the containers, places the medication in her hand and places it in her mouth. It was noted the Claimant knows the uses for all her medications, and that the medication was in numerous areas of the residence and the homemaker did not offer to get the medication for the member. The Claimant did get the medication unassisted. The Claimant testified that she takes all kinds of medications at different times during the day and sometimes gets confused, especially when her "sugar" is high. The physician indicates in his letter (D-3) that he feels the Claimant needs assistance with administering medications due to her psychiatric condition at times prevents her from taking it appropriately. The Pre-Admission Screening (PAS) indicates the Claimant takes at least 18 different medications daily.
- 8) Additional evidence was presented (C-1) in the form of a letter from the Claimant's physician, to corroborate her claim that she has degenerative joint disease that limits her functional abilities.
- 9) Aged/Disabled Home and Community-Based Services Manual Section 503 (D-1)-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.

10) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 – 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.

11) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2 (D-1): An individual must have five (5) deficits on the Pre Admission Screening (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

#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) Independently and b) With Supervision are not considered deficits.

#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)

Dressing ---- Level 2 or higher (physical assistance or more)

Grooming--- Level 2 or higher (physical assistance or more)

Continence (bowel, bladder) -- 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 assistance in the home)

Walking----- Level 3 or higher (one-person assistance 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)

#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.

#28 Individual is not capable of administering his/her own medications.

**VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received three (3) deficits in January 2007 in conjunction with her Aged/Disabled Waiver Program re-evaluation screening.
- 3) Evidence and testimony presented during this hearing support the finding of additional deficits in the areas of dressing and eating. The Claimant needs physical assistance at times in these areas. Policy does not stipulate that specific periods of time have any bearing on whether an individual should be assessed with needing assistance in these categories.
- 4) The required five (5) deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to deny the Claimant's medical eligibility 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 14<sup>th</sup> Day of July, 2007.**

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**Cheryl McKinney  
State Hearing Officer**