



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

August 20, 2007

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 16, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through 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]

The information submitted at your hearing reveals that your medical condition does not 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 action of the Department in denying your application for benefits and services 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  
[REDACTED] Family Services

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 07-BOR-1277**

**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 20, 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 16, 2007 on a timely appeal filed May 1, 2007.

**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 grandson  
\_\_\_\_\_, Claimant's granddaughter  
[REDACTED] CM, Family Services  
Kay Ikerd, RN, BoSS  
[REDACTED] RN, WVMi

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 to be decided is whether the Agency was correct in its decision to deny the Claimant's application for benefits and services 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, Chapter 500, Section 503
- D-2 Pre-Admission Screening (PAS) assessment completed on March 13, 2007
- D-3 Notice of Potential Denial from WVMi dated March 17, 2007
- D-4 Notice of Denial from WVMi dated April 2, 2007

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

- 1) On March 13, 2007, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {see Exhibit D-2, Pre-Admission Screening (PAS) completed on March 13, 2007}.

- 2) On or about March 17, 2007, the Claimant was notified of Potential Denial (Exhibit D-3). 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, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2.

Based on your PAS you have deficiencies in only 2 areas –Bathing and Grooming.

The Claimant was notified that she could provide additional information regarding her medical condition within the next 2-weeks and that any additional information submitted within this timeframe would be considered before a final determination is made.

It should be noted, however, that there was no additional medical information submitted by the Claimant.

- 3) The Claimant was notified that her application for ADW Program eligibility was denied in a termination/denial notice dated April 2, 2007 (Exhibit D-4). This notice states, in pertinent part:

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 A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: 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.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) Representatives speaking on behalf of the Claimant contend that the Claimant is medically eligible to participate in the ADW Program as she should have been awarded a deficit in the following areas: *Vacating, Eating, Dressing, Continence (bladder) and Medication Administration.*

- 5) Representatives testifying on behalf of the Claimant purported that the Claimant would need assistance *vacating* during an emergency because she would get anxious. The Department's evidence indicates, however, that the Claimant's potential anxiety with vacating during an emergency was considered when she was assessed as needing prompting and supervision. In order to qualify for a deficit in vacating, the individual must require physical assistance. While the Claimant uses a cane to ambulate in her home, she routinely exits her home without physical assistance and there is insufficient evidence to indicate that she is mentally unable to vacate her home in the event of an emergency. **Based on the evidence, the Claimant does not qualify for a deficit in vacating.**
- 6) The Claimant's representatives acknowledged that the Claimant can *eat* independently and that her food is often cut up for her as a matter of convenience, however, they contend that the Claimant is unable to shop for her food and carry groceries into her home. The Department cited policy found in 503.2, (#26.a.) which states a deficit is identified in eating if it is rated a level 2 or higher (physical assistance to get nourishment, not preparation). Based on the evidence, there is no medical reason why the Claimant would be unable to cut her own food and she is able to eat independently. Meal preparation and grocery shopping are not considered when determining an individual's ability to eat independently. **Based on the evidence, the Claimant does not demonstrate a functional deficit in eating.**
- 7) Testimony received on behalf of the Claimant indicates that the Claimant can *dress* independently although it was noted that arrangements have been made (washer and dryer moved upstairs to the kitchen) to accommodate the Claimant's difficulty with doing her own laundry. A functional deficit can only be awarded in dressing if the Claimant needs physical assistance (level 2 or higher) with the act of putting on her clothes. **The evidence fails to demonstrate that the Claimant requires physical assistance with dressing and a deficit cannot be awarded.**
- 8) The WVMi RN assessed the Claimant as *continent* of bladder during the March 13, 2007. Documentation found on page 5 of 6 of Exhibit D-2 states – "Wears no incontinence supplies, and stated a few times had incontinence but this does not occur weekly or on a regular basis, since getting bedside commode that she leaves in the living room where she spends most of her time has even less occurrence [sic] of incontinence." The Claimant's grandson testified that the Claimant was having episodes of bladder incontinence on the average of one (1) to two (2) times per week when the assessment was completed and someone must be available to empty and clean the bedside commode. The WVMi RN testified that a deficit in bladder incontinence can only be awarded if the individual has episodes of bladder incontinence three (3) or more times per week. **Based on the evidence, the Claimant was correctly assessed by the WVMi RN and did not demonstrate a deficit in bladder incontinence at the time of the assessment.**
- 9) Evidence submitted to establish a deficit in medication administration (testimony as well as documentation found on page 5 of 6 of Exhibit D-2) reveals that the Claimant's grandson sets-up the Claimant's medication on a daily basis and that she is then able to take her medications. This qualifies under ADW Program policy as prompting and supervision and was correctly assessed by the WVMi RN. **A deficit cannot be awarded in medication administration.**

- 10) 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.

- 11) 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.

- 12) 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 demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that two (2) deficits were established on a PAS completed by WVMi in March 2007 in conjunction with an Aged/Disabled Waiver Program application.
- 3) The evidence submitted at the hearing identified no additional deficits.
- 4) Whereas the Claimant demonstrates only two (2) deficits, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the action of the Agency in denying the Claimant's application for 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 20<sup>th</sup> Day of August, 2007.**

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**Thomas E. Arnett  
State Hearing Officer**