



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

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 12, 2007

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

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 10, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services under the Aged Disabled Waiver, ADW, 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 ADW 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 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 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the January 30, 2007 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the proposal of the Department to terminate services under the ADW Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
CWVAS  
Kay Ikerd, BoSS  
[REDACTED], WVMI

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

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

v.

**Action Number: 07-BOR-1280**

**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 July 10, 2007 for \_\_\_\_\_ on a timely appeal filed April 12, 2007. 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. It should be noted that this hearing was originally scheduled for June 14, 2007. It was rescheduled at the request of the Department for July 10, 2007.

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

**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 Witnesses:

\_\_\_\_\_, Claimant's Sister and Provider

\_\_\_\_\_, Case Manager, Central West Virginia Aging Services, Inc.

\_\_\_\_\_, Homemaker RN, Panhandle Support Services

Department's Witnesses:

Kay Ikerd, RN, Bureau of Senior Services (By telephone)

Fay Wojtowicz, RN, Bureau of Senior Services, (By telephone)

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(s) to be decided is whether the Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program as the Claimant no longer meets the medical requirements.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Service Manual §500

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

**Department's Exhibits:**

D-1 Aged/Disabled Home and Community based Services Manual §503 - 503.4

D-2 Pre-Admission Screening, PAS, completed January 30, 2007

D-3 Notice of Potential Denial dated March 06, 2007

D-4 Statement from Claimant dated March 19, 2007

D-5 Notice of Termination dated April 3, 2007

D-6 Statement from \_\_\_\_\_ dated April 3, 2007

**Claimant's Exhibit:**

C-1 Statement from Dr. \_\_\_\_\_ backdated to December 15, 2006

**VII. FINDINGS OF FACT:**

- 1) This Claimant is a 64-year-old female. She is a recipient of services under the ADW Program. In order to determine her ongoing medical eligibility, an assessment was scheduled for January 30, 2007.

- 2) The Claimant has primary diagnosis of Non-Hodgkins Lymphoma, currently stable. Other medical conditions requiring services: PVD, HX PSVT, Peripheral Edema. The Claimant lives with her husband with the support of a homemaker one time per week. (Exhibit D-2)
- 3) On January 30, 2007 a Bureau of Senior Services (BoSS) Nurse completed the Pre-Admission Screening (PAS) (Exhibit D-2) assessment in the Claimant's home with her, the Claimant, the Homemaker RN, and Claimant's spouse (briefly). The nurse determined from the answers given to her by the Claimant that she had four qualifying deficits. These were physical assistance with eating, bathing, grooming and dressing. (Exhibit D-5) It was noted on the assessment that the PAS assessment and levels were reviewed with all present and they were in agreement. (Exhibit D-2)
- 4) The issue addressed by the Claimant and her witnesses were in the areas of transferring and the Claimant's physical ability to vacate the building in the event of an emergency.
- 5) The PAS-2000, Nurse's Overall Comments, reads in part: "Upon my arrival the member met me at the door. She moved slowly through the house to the living room. Her left leg appears stiff. It is very edematous as is the right foot and leg. The left leg has pitting edema. Transferring/Walking: She transfers from the commode to standing position with use of bar and rope. She holds on to furniture and uses her cane to move about the house. Vacate: Applicant is able to vacate the building." The Claimant was assessed as level 2 (supervised/assistive device) for transferring/walking. She was also assessed as being able to vacate the building independently in the event of an emergency. (Exhibit D-2)
- 6) The Claimant sent a letter after receiving notice of the potential denial. (Exhibits D-3 & D-4) It concerns her ability to transfer. There is no supporting documentation with the letter. Testimony from the Claimant revealed that she has concerns of her ability to vacate her home in the event of an emergency. The assessment is correct in that she has upper body strength and can pull herself up and moves about her home with her cane and holding on to things. The problem could be and is getting up at night. She has arthritis, osteoporosis, and a ruptured disc in her back. It has not gotten any better because of the cancer treatments. She is just not sure that she would be able to get up quickly to vacate if there was some emergency. She has a fear of this happening. She lives in a mobile home. There are two entrances. She and her husband do not sleep together. Where she sleeps, she would have to vacate through a door and down some steps. She has a table in front of the couch which is higher than a coffee table. When she gets up, she elbows herself off of the couch using the table. The situation has gotten worse since January. She sleeps on the couch because she knows her limitations.
- 7) Testimony from the Claimant's case manager revealed that she had discussed the PAS findings with the Claimant. The Claimant had told her that she was not thinking during the assessment about the middle of the night if something would happen like a fire of her ability to get out. They got a statement from her doctor (Exhibit C-1). The Claimant can normally pull herself up to transfer. She has good days and bad days. The letter from the doctor was requested in April. The doctor was out of town. She asked for a statement from the Claimant's medical records in regard to her ability to vacate. It is her opinion that it would be difficult for anyone to wake up from a deep sleep to fire in the

home and be able to get out.

- 8) Testimony from BoSS representative KI revealed that the above letter was not received until 06/26/2007. The letter is dated 12/15/2006. It reads in part “The patient has a history of arthritis and in the morning she is very stiff.....As she moves about more throughout the day, the stiffness decreases. This limits her in her ambulation. If the patient had to leave her residence emergently, I am not certain she could do this because of the arthritis.” KI stated that the ability to vacate is done in conjunction with an algorithm WVMI does with the findings with transferring/walking.
- 9) Testimony from the nurse who completed the assessment, FW, revealed that she observed the Claimant moving through her home and she did not need any hands on assistance. When she asked about the ability to vacate the Claimant was not sure. She never gave a definitive answer.
- 10) Testimony from the Homemaker RN revealed she was present the day of the assessment. When the Claimant got up from her chair she pushed up using the arms of the chair. The Claimant sleeps on a couch and it is her opinion she would have difficulty getting up.
- 11) Testimony from ■ revealed that the Claimant’s condition is not improving. It is something that is progressively downgrading. For her to be able to get up and vacate is in question even during the day.
- 12) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

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.

- 13) Aged Disabled Home and Community-Based Services Manual Section 503.1:

#### MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the ADW Program.

- 14) 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 members are medically eligible based on current and accurate evaluations.

- B. Each applicant/member determined to be medically eligible for ADW 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.

15) Aged Disabled Home and Community-Based Services Manual Section 503.2  
 MEDICAL CRITERIA:

An individual must have five deficits on the Pre-Admission Screening Form (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 to vacate 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. (Item 25 on the PAS 2005).

- a. Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- b. Bathing ----- Level 2 or higher (physical assistance or more)
- c. Grooming--- Level 2 or higher (physical assistance or more)
- d. Dressing ---- Level 2 or higher (physical assistance or more)
- e. Continence-- Level 3 or higher; must be incontinent  
 bowel
- f. Continence-- Level 3 or higher; must be incontinent  
 bladder
- g. Orientation-- Level 3 or higher (totally disoriented, comatose)
- h. Transfer----- Level 3 or higher (one person or two person assist in the home)
- i. Walking----- Level 3 or higher (one person assist in the home)
- j. 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 The individual is not capable of administering his/her own medications.

**VIII. CONCLUSIONS OF LAW:**

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the nurse determined that the Claimant had four qualifying deficits. Those were that she would need physical assistance with eating, bathing, grooming and dressing.
- 2) The issues raised at the hearing were in the areas of transferring and the Claimant's ability to vacate in the event of an emergency. The Department correctly determined that the Claimant needs supervised/assistive device in order to transfer and walk. There was no clear or convincing testimony in this hearing that would change the determination made on January 30, 2007.
- 3) There was clear and convincing testimony given in this hearing to support the fact that the Claimant is not physically able to vacate in the event of an emergency. Testimony from the Claimant and those testifying on her behalf revealed that her medical condition would not allow her to vacate quickly in the event of an emergency. It is noted on the assessment that "moved slowly through the house to the living room. Her left leg appears stiff". An additional deficit will be awarded as the Claimant is not physically able to vacate in the event of an emergency.
- 4) The one additional deficit brings the Claimant's total number of deficits to five (5), rendering the Claimant medically eligible for the ADW Program.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, the Department is reversed in their determination that this Claimant is no longer medically eligible for the Aged Disabled Title XIX (HCB) Waiver program. In addition, the Department will include a deficit for ability to vacate and assign the associated points when assessing the level of care criteria.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 12<sup>th</sup> Day of July, 2007.**

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**Margaret M. Mann  
State Hearing Officer**