



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Building 6, Room 817-B  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

December 14, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 25, 2007. Your hearing request was based on the Department of Health and Human Resources' denial/termination 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).

The information which was submitted at your hearing revealed that you do not meet the medical criteria for the ADW Program;

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program.

Sincerely,

Erika H. Young, Chairman  
Chairman, Board of Review

EHY:rj

cc: Libby Boggess, RN – WV Bureau of Senior Services  
Board of Review

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

██████

**Claimant,**

v.

**ACTION NUMBER: 07-BOR-1821**

**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 October 25, 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 October 25, 2007 on a timely appeal, filed January 19, 2007.

The Claimant had previously filed an appeal over a proposed termination resulting from the Claimant not having received homemaker services for over 100 days. It was agreed by both parties that this matter is now moot.

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

**II. PROGRAM PURPOSE:**

The Program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

### **III. PARTICIPANTS:**

██████ Claimant

Witnesses for the Claimant:

██████ Claimant's husband  
██████, Homemaker RN, ████████████████████  
██████, MD (By Telephone)

Libby Boggess, RN. BoSS (By Telephone)

Presiding at the hearing was Erika H. Young, Chairman and Hearing Officer,  
State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the claimant continues to meet the medical requirements needed to receive ADW services.

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

Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services Sections 504.3, 504.4 and 505 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual

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

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

- D-1 Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services Sections 504.3, 504.4 and 505 Emergency Transfers, Discontinuation of Services and Member Grievance Process effective November 1, 2003
- D-2 Central West Virginia Aging Services, Inc. Notification of Need for Discontinuation of Services dated 11/30/06
- D-3 PAS-2000 dated 06/12/2007
- D-4 Potential Denial Letter dated 12/11/2006
- D-5 WVMI Termination Notice dated 7/19/07

#### **Claimant's Exhibit:**

- C-1 Response Letter and request for hearing dated 7/5/07
- C-2 Letter from ██████████, MD with copy of patient diagnostic report (MRI of Cervical Spine without Contrast) dated 7/5/07

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

- 1) The claimant is a recipient of ADW services.
- 2) A review of medical eligibility was completed on 06/11/2007. Three deficits were found. The deficits found were bladder incontinence, vacating building in the event of an emergency, and skilled needs. (D-2)
- 3) The claimant was notified of potential case closure in a letter dated 12/11/2006. (D-3) No additional information was submitted. A re-evaluation PAS was scheduled and completed on June 11, 2007 and a letter of termination was issued on 07/19/2007. The claimant requested a hearing on this issue. (D-4)
- 4) The claimant disagrees with the findings of being able to eat and feed herself without assistance. She states that her husband and daughter often assist her in preparing and serving meals.
- 5) The claimant disagrees with the finding that she does not need assistance to walk or with transferring. The claimant walked out of her car and up the steps to her home while wearing stacked, thick high heeled shoes without any assistance. Claimant states there are some days she needs help transferring out of the bed and on the couch. The claimant was observed transferring from car and up from a low couch without any difficulty or assistance.
- 6) The claimant disagrees with the finding of being able to bathe herself. She states she has difficulty with balance, going upstairs and getting into the bath tub. She uses a shower chair and receives assistance from her husband. She also has a handicap accessible bathroom in her home.
- 7) The claimant feels some days are worse than others and she was having an exceptionally good day on the day of the assessment. She states her condition can sometimes worsen from day to day and hour to hour. She states she has joint stiffness in the morning and it becomes more difficult to move at the end of the day.
- 8) The claimant feels she can dress herself, but has trouble with small buttons and zippers, but does not state that she cannot use either.
- 9) Dr. [REDACTED] feels the claimant needs assistance with activities of daily living (ADL's) and has a decline in her cognitive functioning. He states the claimant has fallen and should use her cane. It is his opinion the claimant needs assistance walking and has problems with balance and mobility.
- 10) Ms. Boggess acknowledges that during the PAS, the claimant stated that she uses the homemaker services one (1) day a week to clean her house. Ms. Boggess asked the claimant all questions regarding her disability and capabilities and the claimant did not report deficits in the areas of eating, bathing or transferring at the time of the PAS.

- 12) Section 503 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

- 12) Section 503.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

- 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 needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

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

- 13) Section 503.2 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

An individual must have five (5) deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. #24 Decubitus - Stage 3 or 4
- B. #25 In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building; a) and b) are not considered deficits.
- C. #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)

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 incontinent)

Orientation - Level 3 or higher (totally disoriented, comatose)

Transfer - Level 3 or higher (one person or two persons 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. #27 Individual has skilled needs in one or more of these areas - (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

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

14) Aged Disabled Home and Community-Based Services Manual Section 503.4

#### MEDICAL REEVALUATION:

Annual reevaluations for medical necessity for each ADW member must be conducted.

### VIII. CONCLUSIONS OF LAW:

- 1) An individual must have five deficits on the PAS-2000 to qualify medically for the ADW Program. These deficits are determined from a combination of elements on the PAS-2000. An individual must be approved as medically eligible for nursing facility (NF) Level of Care.
- 2) Three deficits were established at the time of the PAS review on 06/11/07. Those were bladder incontinence; vacate a building during an emergency and skilled needs.
- 3) Evidence received at the hearing does not support the finding that the claimant has decubitus, needs physical assistance with eating, physical assistance with transferring/walking, wheeling, bathing, grooming, dressing, or to administer her medication.
- 4) While there was some testimony that the claimant currently needs assistance with bathing, dressing, and walking, there was no persuasive testimony that this was the situation at the time of the assessment. At the time of the assessment she was very mobile and required no assistance. The claimant works a part-time job and drives several miles to and from work. The claimant reported being able to eat, bathe and transfer independently.
- 5) The claimant does not meet medical eligibility criteria. Five (5) deficits are needed and three (3) were established by the assessment.

**IX. DECISION:**

It is the finding of the State Hearing Officer that the Bureau for Senior Services was correct in its determination that the Claimant did not meet the medical criteria for the A/D Waiver Program when the assessment was completed. The Department is **upheld** in the decision to terminate the claimant's benefits under the Aged/Disabled Home and Community-Based Services Waiver (ADW) Program the action described in the notification letter dated July 19, 2007 will be taken.

**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 December, 2007.**

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**Erika H. Young, Chairman  
Chairman, Board of Review**