



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

November 15, 2007

Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 6, 2007. Your hearing request was based on the Department of Health and Human Resources' proposed termination of 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 July 12, 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 action of the Department to terminate services under the A/DW program.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

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

[REDACTED], WVMI  
[REDACTED]

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

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**Claimant,**

v.

**Action Number: 07-BOR-1961**

**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 November 6, 2007 for █ on a timely appeal filed August 17, 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.

**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's Witnesses:

[REDACTED] claimant  
[REDACTED], claimant's homemaker, [REDACTED]  
[REDACTED], RN, [REDACTED]  
[REDACTED], RN [REDACTED]

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone  
[REDACTED], WVMI nurse, by speakerphone

Presiding at the Hearing was Sharon K. Yoho, 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.

**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 thru 503.4
- D-2 Pre-Admission Screening, PAS, completed July 12, 2007
- D-3 Eligibility Determination dated July 12, 2007
- D-4 Notice of potential denial dated July 20, 2007
- D-5 Notice of denial dated August 7, 2007

**VII. FINDINGS OF FACT:**

- 1) This claimant is a 76-year-old male whose Aged Disabled waiver case was undergoing a re-evaluation in July 2007.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on July 12, 2007 with the claimant, and his case manager present. The nurse determined from the answers given to her by the claimant that only four qualifying deficits could be awarded. Those qualifying deficits were in the areas of eating, bathing, incontinence and vacating.
- 3) The issues introduced by the claimant and his witnesses were in the areas of dressing and grooming.

- 4) The claimant advised the evaluating nurse during the PAS that he had dressed himself that day. He then told her that he needs help putting his clothes on. He advised her that he could not pull his T-shirt down and needs help getting his legs into his pants and his socks on. The nurse decided that since he told her that he dressed himself that morning that he should not receive a deficit for dressing. His homemaker testified that most days he cannot pull his socks up or button shirts due to shaking. The nurse testified during the hearing that she was generous in giving him a deficit for dressing, and then corrected the testimony when she realized that she did not give him a deficit for dressing.
- 5) The claimant cannot do his own nail care. The nurse's notes in regard to grooming issues did not address nail care. The nurse testified that there are no specific guidelines as to what to go over for grooming. It is not clear whether the claimant was questioned about nail care however; the claimant was given a deficit for eating due to tremors and decreased strength in his hands. The claimant's toenails are cut by a podiatrist and his homemaker trims his fingernails.
- 6) 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.

- 7) 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.

- 8) 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.

**9) 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).

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|----------------------------|---|
| 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--<br>bowel   | Level 3 or higher; must be incontinent  |
| f. Continence--<br>bladder | Level 3 or higher; must be incontinent  |
| 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.

**10) 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) 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 WVMi nurse, determine that the claimant had only four qualifying deficits in the areas of bathing, eating, incontinence and vacating.
  
- 2) Evidence and testimony provided for this hearing did support deficits in the areas of dressing and grooming. The claimant does need hands on assistance with many items of clothing. He had advised the nurse of this during the PAS. The claimant also requires others to trim his fingernails. Tremors in his hands were documented by the evaluating nurse in the PAS and indications are that nail care may not have been addressed during the PAS.
  
- 3) The Department was incorrect in their assessment of four qualifying deficits at the time of the PAS. Six deficits should have been awarded.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was incorrect in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **reverse** the Department's action to terminate this claimant's services under the Aged Disabled Title XIX (HCB) Waiver program. I further rule that along with assigning two additional deficits that the associated level of care points also be assessed in the areas of dressing and grooming.

**IX. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 15<sup>th</sup> Day of November 2007.**

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**Sharon K. Yoho  
State Hearing Officer**