



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

December 18, 2007



Dear [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 8, 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 not meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** 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  
WVMI

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

█  
**Claimant,**

**v.**

**Action Number: 07-BOR-1973**

**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 8, 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 November 8, 2007 on a timely appeal filed August 9, 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  
Nurse, ██████, Claimant's friend

Kay Ikerd, BOSS - participated telephonically  
██████, 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 July 12, 2007
- D-3 Notice of Potential Denial dated July 17, 2007
- D-4 Notice of Denial dated August 1, 2007
- D-5 IGBR29

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

- C-1 Fax from ██████ dated 10-25-07 (8 pages)

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

- 1) The Claimant was undergoing an initial evaluation for eligibility under the Title XIX Aged and Disabled Waiver Program during the month of July 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on July 12, 2007 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified that the Claimant received zero (0) deficits on the Pre-Admission Screening (PAS) assessment.

- 3) The Claimant was sent a Notice of Potential Denial on July 17, 2007 (D-3) and was advised that she had two weeks to submit additional medical information for consideration by WVMi. No documentation was submitted during this timeframe.
- 4) WVMi sent the Claimant a Notice of Denial (D-4) on August 1, 2007.
- 5) Representatives for the Claimant contend that deficits should be awarded in the following areas:

***Incontinence of bladder:*** The Claimant was rated as occasionally incontinent in this area and did not receive a deficit. The WVMi nurse recorded on the PAS the following:

Has a potty chair beside her bed, states she uses it at nighttime because she has trouble in getting to the bathroom in time. Has a raised seat on her commode – states it was her husband’s but she uses it. Also has a bar on the wall beside her commode. Applicant reports she experiences bladder incontinence “only on occasion”. Denies this occurring on a regular basis. Denies wearing pads, depends, etc. Also reported that on a rare occasion she will experience bowel incontinence also.

The Claimant testified during the hearing that she is incontinent “every night” and sometimes during the day. She stated her room has the smell of urine from her “accidents”. The Claimant’s witness corroborated this statement. The WVMi nurse stated the home was clean and she noticed no urine odor. The Claimant testified she has pads that were donated to her and she keeps them in the closet.

***Dressing:*** The Claimant was rated as needing self/prompting in this area. The WVMi nurse recorded the following information on the PAS:

The applicant is wearing a sweater/top, Capri pants and slippers, 2 sets of earrings, necklace, and rings. She reported that she dressed herself today without difficulty. Reports she fastens her bra both in the back and then sometimes snaps it in the front and pulls it around. Reports she can do buttons and zippers but does have difficulty in doing zippers in the back. Denies having any trouble in putting on her shoes and socks, states she mostly wears sandals but also has tennis shoes and that she is able to tie them. I also observed her push off and put back on her slippers.

The claimant testified she cannot put on hosiery and can’t tie shoes. She states she has back trouble and takes therapy. She states she can’t zip up the back of her dress and

has to wear flat shoes due to a broken foot.

**Transferring:** The Claimant was assessed as needing supervised/assistive device. The WVMI nurse recorded on the PAS that the Claimant has a 4-prong cane, and she observed the applicant raise up/down from her couch several times by herself just holding onto her cane and with little difficulty. She recorded that she observed the Claimant ambulate through the home several times using her cane and her gait was steady. The Claimant reports a history of falls with the most recent fall three (3) weeks ago. The Claimant testified that she cannot transfer without “trouble” and has difficulty getting out of the chair or sofa. She stated she sometimes has to try three or four times and sometimes someone must still help her. She states some days are better than others.

**Medication Administration:** The Claimant was assessed as being able to administer his own medications. The WVMI nurse noted on the PAS that the Claimant reports she takes her meds directly from the prescription bottle and does not use her pill box. The Claimant testified that she lays out her medications, but sometimes forgets and takes it more than once.

**Vacating a Building:** The Claimant was assessed as being able to vacate her home independently in an emergency. The Claimant testified that there is no way she could get out if her home was on fire. She stated she moves very, very, slowly, and could not get out of the home without help. She has a broken foot that will not heal. The WVMI nurse recorded that the Claimant lives in a double wide with a front and back exit. The front exit leads onto a small porch with five (5) steps with railing. She recorded the Claimant said she is able to walk down the steps by holding onto the railing. The back exit also leads onto a small porch with six (6) steps and railing. She recorded the Claimant said she mainly exits using the front door, and would be able to exit her home independently.

**Eating:** The Claimant was assessed as needing self/prompting in this area. The WVMI nurse recorded the following:

The applicant reports she is able to feed herself without difficulty. I observed her drinking Diet Pepsi from a can without difficulty. The applicant reports that she is able to cut up her own food. Receives 1 meal a day from a local program and then stated that she prepares her morning and evening meals – prepares easy meals. I observed her using her hands to grip her cane, carry her meds, wipe her nose with a tissue, and make a phone call. Also used her remote control to turn down the volume on her TV.

- 6) 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.
- 7) 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.
- 8) 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 zero (0) deficits in July 2007 in conjunction with her Aged/Disabled Waiver Program initial application.
- 3) Evidence and testimony presented during this hearing support the finding of one (1) deficit in the area of incontinence of bladder, one (1) additional deficit in the area of vacating a building, and one (1) additional deficit in the area of eating, for a total of three (3) deficits.
- 4) The required five (5) deficits have not 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 **uphold** 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 18<sup>th</sup> Day of December, 2007.**

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**Cheryl McKinney  
State Hearing Officer**