



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

March 19, 2007



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 13, 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 October 13, 2006 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



Libby Bogges, BoSS  
[REDACTED], WVMI

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

██████████  
**Claimant,**

v.

**Action Number: 06-BOR-3390**

**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 March 13, 2007 for ██████████ on a timely appeal filed December 11, 2006. 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 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:

██████████, Homemaker RN, ██████████  
██████████, Homemaker, ██████████.

Department's Witnesses:

Libby Boggess, RN, Bureau of Senior Services (By telephone)

██████████, WVMI nurse, (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.

**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 October 13, 2006

D-3 Notice of Potential Denial dated November 08, 2006

D-4 Statement from Dr. ██████████ dated 11/28/2006

D-5 Notice of Termination dated November 27, 2006

**VII. FINDINGS OF FACT:**

- 1) This Claimant is a 70-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 October 13, 2006.
- 2) The Claimant has primary diagnosis of spinal stenosis, anxiety, depression, COPD and GERD. She has a secondary diagnosis of hyperlipidemia. She lives alone in apartment on third floor of building. Homemaker services 3 days/week, 7 hrs./day. No other assistance. (Exhibit D-2)
- 3) A WV Medical Institute (WVMI) Nurse completed the Pre-Admission Screening (PAS) (Exhibit D-2) assessment in the Claimant's home with her, the Claimant, the

Homemaker, and Homemaker RN present. 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 documentation was reviewed with all present. Agreement voiced. (Exhibit D-2)

- 4) The issue addressed by the Claimant and her witnesses was in the area of the Claimant's physical ability to vacate the building in the event of an emergency.
- 5) When questioned as to vacating the building in case of emergency, the Claimant had stated "If I didn't have to really hurry I think I could make it." Homemaker states she does panic. The assessment had found that the Claimant was able to vacate with supervision. (Exhibit D-2) The Claimant reports that her legs will just go out from under her and she falls. The Homemaker RN reported that the falls have become more frequent. The Claimant did not admit falling as frequently at the time of the assessment as she later told the Homemaker RN. The Homemaker RN reported that the WVMI nurse gave the Claimant ample opportunity to answer the question about vacating. The Homemaker RN stated she kept questioning the Claimant as to whether she was sure she could vacate. The Homemaker RN stated she (Homemaker RN) kept saying she could not. What she sees in the Claimant, she does not feel the Claimant, living on the third floor, could vacate the building at all. The Homemaker RN has been there unannounced and found that the Claimant could not maneuver around the apartment and answer the door. The Claimant gets anxious and confused when under stress. Her ambulation is poor. Testimony from the Homemaker revealed that the Claimant does get confused when under stress.
- 6) Testimony from the WVMI nurse revealed that during the discussion of the Claimant's ability to vacate, the Homemaker did state that the Claimant does panic at times. However, at the conclusion of the assessment, there was agreement voiced by all. In regard to the confusion, the PAS does state that the Claimant can evacuate with supervision. The confusion was taken in consideration at the time.
- 7) 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.

- 8) 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.

- 9) 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.

10) 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 WVMi 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 issue raised at the hearing was in the area of the Claimant's ability to vacate in the event of an emergency. On the assessment, it is noted that the Claimant had stated "If I didn't have to really hurry I think I could make it" in regard to her ability to vacate. Testimony from the Claimant's witnesses at the hearing supports the finding that the Claimant would not be physically able to vacate the third floor of the building in the event of an emergency. One additional deficit is awarded to the Claimant.
- 3) 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.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 19<sup>th</sup> Day of March, 2007.**

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**Margaret M. Mann**  
**State Hearing Officer**