

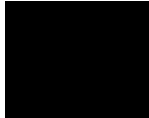


**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

March 1, 2007



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 28, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your continued participation in the Aged and Disabled Waiver Services Program.

In arriving at a decision, the State Hearings 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 and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows:

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. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in 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 Social Security Administration (SSA) if an active SSI (Supplemental Security Income) recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS).

The information submitted at your hearing revealed: You meet the continued medical eligibility criteria for the Aged and Disabled Waiver Services Program.

It is the decision of the State Hearings Officer to **reverse** the **action** of the Department to deny continued medical eligibility.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Kay Ikerd, RN – Bureau of Senior Services
[REDACTED], RN – West Virginia Medical Institute
[REDACTED], Case Manager – [REDACTED]

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

██████████
Claimant,

v.

Action Number: 06-BOR-3478

**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 1, 2007 for Mr. ██████████. 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 February 28, 2007 on a timely appeal filed December 21, 2006.

It should be noted here that the Claimant's benefits were continued under the Aged and Disabled Waiver Services Program.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver Services Program 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:

[REDACTED] Claimant

[REDACTED] Claimant's Daughter

[REDACTED], Case Manager – [REDACTED]

[REDACTED], Homemaker – [REDACTED]

Kay Ikerd, RN – Bureau of Senior Services (BoSS)

[REDACTED], RN – West Virginia Medical Institute (WVMI)

Mary Hamilton, RN – Bureau for Medical Services (Observing)

Joann Ranson, RN – Bureau for Medical Services (Observing)

Cindy Knighten, RN – Bureau for Medical Services (Observing)

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Does Mr. [REDACTED] meet the continued medical eligibility criteria for the Aged and Disabled Waiver Program?

V. APPLICABLE POLICY:

Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services Chapters 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS; 503.1 MEDICAL ELIGIBILITY; 503.1.1 PURPOSE; and 503.2 MEDICAL CRITERIA

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services Chapters 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS; 503.1 MEDICAL ELIGIBILITY; 503.1.1 PURPOSE; and 503.2 MEDICAL CRITERIA
- D-2 Pre-Admission Screening (PAS) Form dated 10/17/06

Claimants' Exhibits:

- C-1 Letter from the Claimant dated 11/20/06
- C-2 Letter from Case Manager dated 11/21/06
- C-3 Note from Claimant's Physician dated 11/25/06
- C-4 Cover Letter from Case Manager dated 11/21/06

VII. FINDINGS OF FACT:

- 1) This issue involves the denial of continued services under the Aged and Disabled Waiver Services Program. The assessment was completed on October 17, 2006. Those

present during the assessment were the Claimant; his Homemaker; and the WVMi RN (Exhibit D-2).

- 2) The WVMi RN determined through her evaluation that the Claimant only had four of the five required deficits for Waiver Services. The deficits were in the areas of: Unable to Vacate the Building; Bathing; Dressing; and Grooming. It should be noted that the evaluation was based only on the Claimant's functional levels on the day of the visit.
- 3) The WVMi RN reviewed Claimant's Exhibits C-1, 2, 3& 4 and determined that they did not provide any additional information than provided during the October 17, 2006 assessment.
- 4) The only area of disagreement between the parties was the Claimant's ability to cut up foods.
- 5) The WVMi RN referred to her notes on the Claimant's Functional Level for Eating. It states:

Member stated he is able to feed himself. Member has to have meals prepared for him. Homemaker has things made up he can heat up over the week-end, and he has TV dinners which he can make as well. Member has +2 grasp with hands and stated he can use a fork and knife to cut up foods on his plate if he needs to. The homemaker agreed with this that he does cut up his own foods on plate.
- 6) The WVMi RN testified that the Claimant's ability to grasp items was rated +2, on a scale from 1 (being unable to grasp) to 3 (firm grasp).
- 7) The WVMi RN provided reliable testimony.
- 8) The Homemaker testified that she did not make the aforementioned statements. It was her testimony that she must process the Claimant's foods. This was confirmed by the Claimant as well as his Daughter.
- 9) The testimony received from the Claimant, Daughter, and Homemaker were considered reliable testimony.
- 10) A signature page for all parties participating in the PAS assessment to sign is not a part of the process, to confirm factual information.
- 11) 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS (Exhibit D-1): 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. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in 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 Social Security Administration (SSA) if an active SSI (Supplemental Security Income) recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

12) 503.1 MEDICAL ELIGIBILITY (Exhibit D-1):

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

13) 503.1.1 PURPOSE (Exhibit D-1):

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

14) 503.2 MEDICAL CRITERIA (Exhibit D-1):

An individual must have five (5) 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.

<u>Section</u>	<u>Description of Deficits</u>
#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
a.	Eating Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing Level 2 or higher (physical assistance or more)
c.	Dressing Level 2 or higher (physical assistance or more)
d.	Grooming Level 2 or higher (physical assistance or more)
e.	Continence, bowel Level 3 or higher; must be incontinent.
f.	Continence, 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 assistance in the

- home)
- i. Walking Level 3 or higher (one-person assistance 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: (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) An individual must have five (5) deficits on the Pre-Admission Screening Form (PAS), to qualify medically for the ADW Program.
- 2) The October 17, 2006 PAS was based on the Claimant's functional levels on the day of the WVMi RN's visit. The WVMi RN provided a very detailed assessment.
- 3) A signature page for all parties participating in the PAS assessment to sign is not a part of the process, to confirm factual information.
- 4) Testimony from the Claimant, Daughter and Homemaker support an additional deficit for Eating.

IX. DECISION:

It is the decision of this State Hearing Officer to reverse the action of the Department to deny continued medical eligibility under the Aged and Disabled Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of March, 2007.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer