



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

May 29, 2009

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RE: -----

Dear -----:

Attached is a revised copy of the findings of fact and conclusions of law on your hearing held April 7, 2009. This revision corrects typographical errors found in the Program Purpose section.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Mary McQuain, Esq., Assistant Attorney General  
[REDACTED]  
-----, WVMI  
-----, Southwestern Community Action Council

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

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**Claimant,**

v.

**Action Number: 08-BOR-2548**

**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 May 18, 2009 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 April 7, 2009 on a timely appeal, filed November 24, 2008.

All persons offering testimony were placed under oath.

**II. PROGRAM PURPOSE:**

The program entitled Aged and 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) homemaker and (2) 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 NF level care but who have chosen the Waiver Program Services as opposed to being institutionalized.

**III. PARTICIPANTS:**

-----, Claimant  
-----, Claimant's Attorney  
[REDACTED] -----  
-----, Claimant's mother  
-----, Claimant's father  
-----, RN, Southwestern Community Action Council  
-----, RN, Panhandle Support Services  
Mary McQuain\*, Esq., Assistant Attorney General  
-----\*, RN, WVMI  
[REDACTED]

\* Participated by speakerphone

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Department was correct in its action to terminate Aged and Disabled Waiver Program Services to the Claimant based on medical eligibility findings.

**V. APPLICABLE POLICY:**

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2; Attachment 14

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

**Department's Exhibits:**

- D-1 Policy Manual §501.3.2 – Medical Criteria; Attachment 14
- D-2 Notice of Termination/Denial dated November 13, 2008
- D-3 Notice of Potential Denial dated October 29, 2008
- D-4 Pre-Admission Screening (PAS) form, dated October 28, 2008
- D-5 Supplemental information received November 14, 2008

**VII. FINDINGS OF FACT:**

- 1) Claimant is a forty-one (41) year old male recipient of Medicaid Aged and Disabled Waiver (ADW) Services. The Department's WVMI nurse completed a Pre-Admission Screening (PAS) of the Claimant to reevaluate his medical eligibility for the program on October 28, 2008 (Exhibit D-4).

The Claimant, the WVMi nurse, and the Claimant's Case Manager were present on the day of the PAS. The WVMi nurse testified that the Claimant was able to answer questions on his own, seemed to understand the questions, was oriented and alert, and was able to provide past medical history. She indicated that the only question at the end of the PAS had to do with arthritis, and the documentation regarding this was not received later.

The Department issued the Claimant a notice of potential denial on October 29, 2008 (Exhibit D-3), and a denial notice on November 13, 2008 (Exhibit D-2). The notice advised the Claimant that deficits were only awarded in four (4) health areas, and that a minimum of five (5) deficits are required for medical eligibility. Deficits were awarded in the areas of *ability to vacate a building, eating, dressing, and continence*.

- 2) The area introduced on behalf of the Claimant was *medication administration*.
- 3) Policy from the Aged and Disabled Home and Community-Based Services Waiver Policy Manual §501.3.2 (Exhibit D-1) states:

**501.3.2 MEDICAL CRITERIA**

An individual must have five (5) deficits on the Pre-Admission Screening Form (PAS), Attachment 14, to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section	Description of Deficits	
#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	
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 for 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.	

All of the above medical criteria information also applies to Personal Options.

- 4) With regard to *medication administration*, the WVMI nurse assessed the Claimant as capable “With prompting/supervision,” a designation which does not award a deficit. Testimony described the Claimant as having had multiple brain surgeries in the past, with ongoing cognitive and memory problems. Testimony from the Claimant and his mother revealed that the Claimant had missed medications in the past because he had forgotten to take them.

Testimony from the WVMI nurse suggested that, for individuals with memory problems, the use of verbal prompts and pillboxes marked with the days of the week or times of the day could be helpful. She reiterated that the testimony describing the Claimant fits the prompting and supervision assessment.

### VIII. CONCLUSIONS OF LAW:

- 1) The Aged and Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged and Disabled Waiver program. The WVMI nurse determined, at the time of the PAS, that the Claimant had only four (4) qualifying deficits in the areas of *ability to vacate a building, eating, dressing, and continence*.
- 2) Testimony and evidence regarding the area of *medication administration* revealed that the Claimant requires prompting and supervision, as assessed by the WVMI nurse. No testimony or evidence was provided to establish that the Claimant was physically unable to take his own medicine, only that he sometimes forgets to do so. The WVMI nurse’s assessment in this area is correct, and the Department was correct to find no deficit in this area.

- 3) With four (4) deficits determined at the time of the PAS, and no additional deficits found during the hearing, the Claimant has failed to meet medical eligibility for Medicaid Aged and Disabled Waiver Services, and the action of the Department to deny these services is correct.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny Medicaid Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility requirements.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of May, 2009.**

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**Todd Thornton  
State Hearing Officer**