



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 2590  
Fairmont, WV 26555

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 22, 2009

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 15, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through 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 501]

The information submitted at your hearing reveals that your medical condition continues to require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate benefits and services provided through the Medicaid, Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
CWVAS  
WVMI

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 08-BOR-1908**

**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 January 22, 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 January 15, 2009 on a timely appeal filed August 12, 2008.

**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  
\_\_\_\_\_, CM, CWVAS  
\_\_\_\_\_, Homemaker RN  
\_\_\_\_\_, Homemaker  
\_\_\_\_\_, RN, CWVAS  
Kay Ikerd, RN, BoSS  
Tammy Kessel, RN, WVMi

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

All parties participated telephonically.

### **IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Agency was correct in its proposal to terminate the Claimant's benefits and services provided through the Medicaid Aged & Disabled Home and Community-Based Waiver Services Program.

### **V. APPLICABLE POLICY:**

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

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

#### **Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed on July 9, 2008
- D-3 Notice of Potential Denial dated July 23, 2008
- D-4 Notice of Termination/Denial dated August 7, 2008

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

- C-1 Correspondence from \_\_\_\_\_ M.D., dated January 8, 2009

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

- 1) On July 9, 2008, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on 7/9/08}.

- 2) On or about July 23, 2008, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 501.3.2.

Based on your PAS you have deficiencies in only 3 areas – Eating, Grooming and Continence.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks. It should be noted that no additional information was received/reviewed.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated August 7, 2008 (Exhibit D-4). This notice states, in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 3 areas – Eating, Grooming and Continence.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates three (3) deficits but indicated the medical assessment completed in July 2008 fails to identify five (5) functional deficits necessary to establish medical ADW eligibility.
- 5) The Claimant and her representatives contend that the Claimant remains medically eligible to participate in the ADW Program as she is demonstrating a functional deficit in Bathing, Dressing and Vacating [in the event of an emergency].

**Bathing-** The Documentation found on the PAS (D-2) specific to bathing is often conflicting and difficult to follow. The Claimant, however, reported that she is afraid to get in-and-out of the bath for fear of falling. She further indicated that she often takes a “spot bath” and that \_\_\_\_\_ washes her back once in a while. It is also documented that the Claimant will not take a bath/shower unless someone is with her.

Testimony received at the hearing reveals that the Claimant is unable to raise her leg(s) and step into the tub/shower without assistance. A diagnosis of Peripheral Neuropathy is confirmed on the PAS (D-2, page 3 of 8) and difficulty with ambulation and transferring is noted. In addition, the Claimant has a visual impairment in her left eye due to a failed corneal graft (C-1) which is resulting in increased incidence of falls. Based on the evidence, the Claimant requires level 2 (physical assistance) with bathing as she is unable to transfer in and out of the tub independently.

**Dressing-** Documentation found in D-2 is again inconsistent and conflicting. Credible testimony received at the hearing reveals that the Claimant is unable to put her socks on (standing or seated) and she needs assistance with getting her underpants and trousers started. This finding is consistent with the range of motion (Mini Assessment) documentation found on page 7 of 8 as well as her diagnosis of Peripheral Neuropathy. The evidence reveals that the Claimant is demonstrating a deficit in dressing (level 2).

**Vacating** – Vacating was reported to be an issue by the Claimant and her representatives because the Claimant has difficulty opening the heavy doors that exit the front of her building. The fact of the matter is, however, the Claimant has a sliding glass door that exits the back of her apartment to a ground-level patio. The Claimant can transfer and ambulate with the aid of an assistive device and her physical limitations do not prevent her from using this door as an exit. Based on the evidence, the Claimant does not qualify for a deficit in Vacating.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (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 501.3.2 Medical Criteria: 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 states 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 evidence reveals that the Claimant was awarded three (3) deficits on a PAS completed by WVMi in July 2008 – Vacating, Bathing and Continence.
- 3) The evidence submitted at the hearing identifies two additional deficits – Bathing and Dressing.
- 4) Whereas the Claimant demonstrates five (5) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program is therefore established. The Claimant's LOC determination shall include the points awarded from this decision.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's benefits and services through the Medicaid, 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 22<sup>nd</sup> Day of January, 2009.**

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**Thomas E. Arnett  
State Hearing Officer**