



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 23, 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  
Legal Aid of WV  
WVMI

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 08-BOR-2014**

**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 23, 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 originally scheduled to convene on October 21, 2008 but was rescheduled at the request of the Claimant and convened on January 8, 2009 on a timely appeal filed August 26, 2009.

**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

\_\_\_\_\_, Homemaker

\_\_\_\_\_, RN, Companion Care

\_\_\_\_\_, CM, CCWV

\_\_\_\_\_, Paralegal, Legal Aid of WV – Claimant’s representative

Kay Ikerd, RN, BoSS (Participated by phone)

Debra LeMasters, RN, WVMI (Participated by phone)

Presiding at the hearing was Thomas E. Arnett, 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 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 18, 2008
- D-3 Notice of Potential Denial dated July 21, 2008
- D-4 Correspondence from \_\_\_\_\_ M.D. dated July 24, 2008
- D-5 Rx Not Pad dated July 31, 2008 from \_\_\_\_\_ Family Practice (physician’s signature not legible)
- D-6 Notice of Termination/Denial dated August 11, 2008

#### Claimant’s Exhibits:

- C-1 Termination notice from WVMI dated August 11, 2008 (Same as D-6)
- C-2 West Virginia Medicaid Release form dated July 18, 2008
- C-3 \_\_\_\_\_’s July 18, 2008 PAS evaluation
- C-4 Medical Necessity Evaluation Request dated June 24, 2008
- C-5 Potential Denial notice from WVMI dated July 21, 2008 (Same as D-3)
- C-6 Medical documentation (Same as D-4 & D-5) – Claimant’s medical record for period January 29, 2008 to November 2008.
- C-7 No document provided
- C-8 Additional confirmation of \_\_\_\_\_’s arthritis dated July 21, 2008
- C-9 Sample PAS evaluation form

## 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 7/18/08}.
- 2) On or about July 21, 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 – Bathing, 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. Additional documentation was received and had been identified as Exhibits D-4 & D-5.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated August 11, 2008 (Exhibit D-6). 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 – Bathing, 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 (Bathing Grooming and Continence) but indicated the medical assessment completed in July 2008 fails to identify five (5) functional deficits necessary to establish medical eligibility.
- 5) The Claimant and her representatives contend that the Claimant is demonstrating a functional deficit in Dressing and Vacating [in the event of an emergency], and therefore, continues to be medically eligible.
- 6) The Claimant contends that she requires physical assistance with dressing and indicated during the assessment that she is unable to put on her pants and socks [in the winter months]. Exhibit D-2, page 8 of 10, reveals that the WVMI RN documented in her assessment – “As she demonstrated at visit she was able to lift both legs up when sitting down, was able to place left leg over right leg which would bring foot close enough for her to pants over and she was able to bend over and pick her purse up off the floor, client has ability to position legs to place pants over her feet.”

The Claimant cited Exhibit D-2, page 9 of 10, wherein the WVMI RN documented – “She stated sometimes in winter she may wear socks, majority of time [emphasis added] client has functional ability to dress herself...”

Testimony presented at the hearing reveals that the homemaker helps the Claimant get dressed daily. The homemaker purported that when she returns to work on Monday, the Claimant is wearing the same clothes that she dressed her in on Friday. The Claimant’s homemaker testified that she worked on the morning the WVMI RN completed the assessment and dressed the Claimant that day.

Evidence received at the hearing is consistent with information reported at the time of the assessment and the Claimant’s physical limitations (degenerative disc disease / chronic low back pain, and arthritis) compromise her ability to dress independently. Based on the evidence, the Claimant requires level 2, physical assistance, with dressing and a deficit is therefore awarded.

- 7) The evidence reveals that the Claimant relies on her walls and furniture to ambulate in her home but must use a walker outside of her home. Transferring and walking are both assessed at a level 2 (supervised/assistive device), however, it is noted that the Claimant uses a walker when ambulating outside of her home. The Claimant presents a diagnosis of arthritis and chronic low back pain due to degenerative disc disease. The WVMI RN testified that the Claimant requires only prompting and supervision to exit (vacate) her home in the event of an emergency. Supervision, according to the WVMI RN, can be done by emergency responders or a neighbor who would remind her to get her walker if experiencing a panic attack or wake her if she was sleeping soundly. The WVMI RN purported that a deficit in vacating can only be established if the individual requires hands-on physical assistance to vacate. It is apparent that supervision, or lack thereof, is a concern, particularly since the Claimant is known to suffer from panic attacks, bipolar disorder and has slept through a fire drill.

While the argument presented by both parties has merit, the Claimant faces both mental and physical challenges to vacate her home in the event of an emergency. Having considered the totality of the evidence, I find the Claimant would require hands-on physical assistance to vacate.

8) 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.

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 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.

10) 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:  
(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 – Bathing, Grooming and Continence.
- 3) The evidence submitted at the hearing identifies two additional deficits – Dressing and Vacating [in the event of an emergency].
- 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 23<sup>rd</sup> Day of January, 2009.**

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**Thomas E. Arnett  
State Hearing Officer**