



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 27, 2009

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 23, 2008. 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 no longer requires 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 **uphold** the proposal of the Department to terminate your benefits and services 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  
CCIL  
WVMI

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

\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 08-BOR-2267**

**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 27, 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 December 23, 2008 on a timely appeal filed October 6, 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

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

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

\_\_\_\_\_, CM, CCIL

Kay Ikerd, RN, BoSS (Participated telephonically)

Debra LeMasters, RN, WVMi (Participated telephonically)

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 through the Medicaid Aged & Disabled Home and Community-Based (HCB) 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 8/27/08

D-3 Notice of Potential Denial dated 9/2/08

D-3a Information received from Dr. \_\_\_\_\_ on 9/8/08

D-3b Handwritten documentation received 9/11/08 from Physical Therapist \_\_\_\_\_

D-3c Plan of Care for period 8/27/08 - 10/9/08

D-4 Notice of Termination/Denial dated August 7, 2008

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

- 1) On August 27, 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 8/27/08}.

- 2) On or about September 2, 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 Dressing.

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 additional information was received/reviewed and has been identified as Exhibits D-3a, D-3b and D-3c.

- 3) The Claimant was subsequently notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated September 22, 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 4 areas – Vacate a Building [in the event of an emergency], Bathing, Grooming and Dressing.

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

- 4) As noted in the previous finding, the Department stipulated that the Claimant demonstrates four (4) deficits but indicated the medical assessment completed in August 2008 fails to identify five (5) functional deficits necessary to establish medical eligibility for participation in the ADW Program.
- 5) The Claimant and his representatives contend that the Claimant remains medically eligible to participate in the ADW Program as he is demonstrating a fifth (5<sup>th</sup>) deficit in bowel incontinence.

- 6) The assessment completed on August 27, 2008 (D-2) indicates the Claimant was assessed at a level 1 (continent) in section 26.f. A review of narrative the documentation found on page 8 of 9 reveals that the Claimant denied having bowel incontinence on the day of the assessment.

Testimony received at the hearing reveals that the Claimant had gallbladder surgery in March 2008 and that he has been experiencing diarrhea since his surgery. He stated that he did not tell anyone because it is embarrassing for him. The Claimant's homemaker purported that it was approximately two months after the assessment that she noticed soiled underwear and Exhibit D-3c (Plan of Care) notes that the Claimant is continent/independent in toileting.

A review of the evidence (testimony and documentation) submitted in this case fails to confirm a diagnosis of bowel incontinence by a physician or a report of bowel incontinence episodes at the time of the assessment by the Claimant or those present at the assessment. Based on these findings, a deficit cannot be awarded in the functional area of Continence.

- 7) 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.

- 8) 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.

- 9) 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 (4) deficits resulting from a PAS assessment completed by WVMI in August 2008 – Vacate a Building, Bathing, Grooming and Dressing.
- 3) The evidence submitted at the hearing fails to confirm the existence of any additional deficits.
- 4) Whereas the Claimant demonstrates only four (4) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program cannot be established.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** 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 27<sup>th</sup> Day of January, 2009.**

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**Thomas E. Arnett**  
**State Hearing Officer**