



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 468  
Hamlin, WV 25523

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

February 18, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 10, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of your medical eligibility under 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]

Information submitted at your hearing reveals that you do not meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to deny your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
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**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
BOARD OF REVIEW**

-----,

**Claimant,**

**v.**

**Action Number: 08-BOR-2517**

**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 February 10, 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 February 10, 2009 on a timely appeal filed November 24, 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's daughter and Power of Attorney

Kay Ikerd, BOSS

Debra Lemasters, WVM

It should be noted that the hearing was conducted telephonically.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and 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 deny benefits under the Aged/Disabled Home and Community-Based Waiver Program.

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

Aged/Disabled Home and Community-Based Services Manual Sections 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 September 8, 2008
- D-3 Notice of Potential Denial dated September 15, 2008
- D-4 Notice of Denial dated September 30, 2008

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

None

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

- 1) The Claimant was undergoing an initial evaluation for the Title XIX Aged and Disabled Waiver Program during the month of September 2008.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on September 8, 2008 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified the Claimant received two (2) deficits on the Pre-Admission Screening (PAS) assessment in the areas of grooming and continence.

- 3) The Claimant's physician, Dr. [REDACTED] was sent a Notice of Potential Denial on September 15, 2008 (D-3) and was advised that the Claimant had two weeks to submit additional medical information for consideration by WVMJ. No additional documentation was submitted by the Claimant.
- 4) The Department sent the Claimant a Notice of Denial (D-4) on September 30, 2008. The Claimant requested a hearing on November 24, 2008.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

***Dressing:*** which is under Functional Abilities. The Claimant was rated as self/prompting. The WVMJ nurse recorded the following on the PAS:

She stated she can put on her own tops and was able to lift both arms to reach head with hands to place tops over head and able to lift and move arms to be able to place arms into sleeves herself. She stated she fastens her bra in the front and moves closure around to the back and than [sic] puts the rest of her bra on. She stated she sits on bed to put on her slacks and was able to lift both legs without difficulty when sitting and can reach feet to start on her pants and than [sic] she stated she stands up and than [sic] is able to pull of [sic] her pants. She stated she sits on bed to put on her knee high hose [sic] for she stated she can position legs to reach feet to put hose [sic] on herself. Sons stated she requires prompting [sic] to change her clothes as well as prompted [sic] to get "dressed". Applicant denied she required assistance to dress, and HM does not assist her to get dressed.

The Claimant's daughter testified that the Claimant prefers to stay in her night gown and will not change clothes unless she is prompted, however, she can physically change by herself after being prompted.

***Eating:*** which is under Functional Abilities. The Claimant was rated as self/prompting. The WVMJ nurse recorded the following on the PAS:

Per those present she stated she can feed herself and can cut up the type of food she eats. Good grasp bilateral. Son did not disagree that she can cut up her food.

The Claimant's daughter stated that the Claimant has diabetes and is supposed to eat specific foods. She states that with the dementia the Claimant is not good at making her food choices and will eat things that are not good for her. She doesn't understand nutrition and spoilage. She acknowledged that the Claimant is capable of getting food into her mouth on her own.

**Orientation:** which is under Functional Abilities. The Claimant was rated as being “oriented” in this area. The WVMi nurse recorded the following on the PAS:

Alert and oriented x 3. Able to state name, address, apt. number, birth date, year and month. Those present stated her short term memory is impaired, forgets to take medications, does not remember what she has had for breakfast that day.

The Claimant’s daughter testified that the Claimant tries to please strangers. She mentioned that her mother once ordered numerous items from QVC and ruined her credit. She can not balance a checkbook.

**Medication Administration:** The Claimant was rated as needing “prompting/supervision” in this area. The WVMi nurse recorded the following on the PAS:

Per those present her son fills her weekly pill planner due to unable to fill box correctly. Applicant stated she takes her pills out of pill planner and places them in her mouth. Son stated she requires prompting [sic] for medications day and evening. Son stated last week on 2 days when she was not called in PM and prompted [sic] to take them she missed both evening doses.

The Claimant’s daughter testified that the Claimant takes a long list of medications and couldn’t figure out what to take and when to take it. She states that sometimes when reminded she will say she will do it later and then forgets. Once, her blood pressure was very high because she missed taking the medications.

**Vacating a Building:** The Claimant was rated as needing “supervision” in this area. The WVMi nurse recorded the following on the PAS:

Per those present in event of emergency due to senile dementia DX would require supervision for vacating. She state [sic] she could walk down the steps to vacate building and son did not disagree.

The Claimant’s daughter testified that the Claimant would have difficulty figuring out where to go when getting out of the home in an emergency. She gets lost and wanders around. She can’t even find the laundry room in the building. She walks “very slowly” and once she gets to the lobby she has to pause and think about where to go. She states she could follow someone if they prompted her along, however she would be very slow.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 503 (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 503.2 (D-1): 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 dictates 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 Claimant received two (2) deficits in September 2008 in conjunction with her Aged/Disabled Waiver Program initial evaluation in the areas of grooming and continence.
- 3) The totality of the evidence and testimony presented during this hearing support the finding of one (1) additional deficit in the area of vacating a building in an emergency. The fact that the Claimant walks "very slowly" would make it necessary for physical assistance in evacuating her home during an emergency.
- 4) The required five (5) deficits have not been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny the Claimant's medical eligibility under the 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 17<sup>th</sup> Day of February, 2009**

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**Cheryl Henson  
State Hearing Officer**