



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 January 14, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for 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 fails to demonstrate that your medical condition 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 action of the Department in its decision to deny your application for 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  
WVMI

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 09-BOR-507**

**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 January 14, 2009 on a timely appeal filed September 25, 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  
\_\_\_\_\_, Claimant's son  
\_\_\_\_\_, Claimant's daughter-in-law  
\_\_\_\_\_, Caregiver  
Brian Holstine, LSW, BoSS (Participated telephonically)  
Tammy Kessel, RN, WVM (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 action to deny the Claimant's application for benefits and services 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 31, 2008  
D-3 Notice of Potential Denial dated August 19, 2008  
D-3a Correspondence from \_\_\_\_\_ (Request for Reconsideration) undated  
D-3b Correspondence from \_\_\_\_\_ M.D., dated September 3, 2008  
D-4 Notice of Termination/Denial dated September 15, 2008

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

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

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

- 1) On July 31, 2008, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on 7/31/08}.

- 2) On or about August 19, 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 2 areas – Vacate a Building [in the event of an emergency] 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 additional information was received/reviewed – See Exhibits D-3a and D-3b.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated September 15, 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 – Vacate a Building [in the event of an emergency] 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 two (2) deficits but indicated the medical assessment completed in July 2008 fails to identify five (5) functional deficits required by policy to establish ADW Program ADW eligibility.
- 5) The Claimant and her representatives contend that the Claimant should have been found medically eligible to participate in the ADW Program as she is also demonstrating a functional deficit in Grooming, Orientation, Medication Administration, Eating, Bathing and Dressing. These deficits, according to the Claimant's representatives, are primarily related to her diagnosis of Alzheimer's / Dementia.

- 6) The evidence reveals the following findings specific to the functional areas contested:

*Eating* – The PAS assessment (D-2) indicates that the Claimant demonstrated moderate and equal bilateral grip in her hands. She feeds herself using a fork and spoon and is reported to be able to cut her own food. While meal preparation and dietary concerns were noted areas of concern at the hearing (also see Exhibits D-3a and Exhibit D-3b), an individual must require hands-on physical assistance with eating (must need to be fed) in order to qualify for a deficit in eating. **Based on the evidence, the Claimant's requires only prompting and supervision, and therefore, does not qualify for a deficit in eating.**

*Bathing* – In order to qualify for a deficit in bathing, the individual must require level 2 (physical assistance). This could include physical assistance with transferring in-and-out of the shower/tub and/or hands on assistance with the act of bathing/washing due to the inability of the individual. Exhibit D-3a indicates “yes” to the question of whether the Claimant can bathe herself and notes only that she needs to be reminded to bathe with regularity. While Dr. [REDACTED] indicates in Exhibit D-3b that bathing is an area of concern, there is no documentation to justify why the Claimant would require physical assistance. Exhibit D-2 provides documentation consistent with prompting and supervision as the Claimant is independent with bathing and requires only oversight. **Based on the evidence, the Claimant has been properly assessed at a level 1 (self/prompting) and deficit cannot be awarded in bathing.**

*Dressing* – In Exhibit D-3a, the Claimant's representative contends that the Claimant can dress herself “But we see her in the same clothes time after time.” Dr. [REDACTED] notes that dressing is a concern in Exhibit D-3b but fails to indicate how or why the Claimant would require physical assistance. Testimony presented at the hearing is consistent with the documented evidence found in Exhibit D-2 – the Claimant can complete all functional tasks related to dressing and requires only prompting. **The evidence clearly demonstrates that the Claimant does not qualify for a deficit in dressing.**

*Grooming* – Testimony presented at the hearing reveals that the Claimant insists that she have her hair washed and styled weekly at a hair salon. The Claimant's representatives reported that the Claimant refuses to wash her own hair or allow anyone else to complete this task. Caregivers have given in to the Claimant on this task only because the Claimant will develop a hair odor if she is not taken to the salon. The Claimant's daughter-in-law purported that the Claimant cannot clip her toenails and that she must do it between visits to the podiatrist. Although Exhibit D-2 indicates that the Claimant clips her toenails when not done by the podiatrist, and physical limitations do not appear preclude the Claimant from completing this task, the Claimant requires special care due to diabetes and could potentially cause additional health care concerns given her mental status. Furthermore, the Claimant's insistence that her hair only be done at the salon (or not done at all) could be related to her diagnosis of Alzheimer's and Dementia. **To err on the side of caution, I find the Claimant requires physical assistance in the functional area of grooming.**

*Orientation-* In order for an individual to qualify for a deficit in orientation, the individual must be assessed at a level 3 (totally disoriented/comatose) at all times. Exhibit D-2 reveals that the Claimant is demonstrating intermittent episodes of disorientation to time and place – the Claimant is always oriented to person. Specifically, the Claimant gets confused about what calendar year it is, and because she switches homes on a weekly basis (cared for by different family members weekly), it was purported that she forgets she is living with family members and wants to return to her home. While it is clear that the Claimant is exhibiting symptoms consistent with her diagnosis of Alzheimer’s / Dementia, there is insufficient evidence to demonstrate the Claimant is totally disoriented. **A deficit cannot be awarded in the area of orientation.**

*Medication Administration* –The criteria used to assess this area, as noted in Exhibit D-2, page 8 of 9, states – “The individual must not be capable of administering his/her own medications if the prescription medication must be placed in the member’s hand, mouth, tube or eye by someone other than the member at all times.” Page 4 of 9 (Exhibit D-2) provide contradictory information regarding the Claimant’s ability to access her medications. It is noted that she can open a pill bottle but cannot open at least one of her medication containers. While the WVM RN concluded that the Claimant does not require her medications be placed in her hand or mouth, the fact that the Claimant cannot open a medication container, and the corroborating statement by Dr. [REDACTED] (Exhibit D-3b) indicating that medication must be placed in the Claimant’s hand, a finding that the Claimant is unable to administer her own medications is consistent with the standard of assessment set forth on page 8 of 9. **Based on the evidence, the Claimant is demonstrating a functional deficit in medication administration.**

- 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. This is the same level of care and services required for an individual to meet a NF (nursing facility / nursing home) level of care.
- 2) The evidence reveals that the Claimant was awarded two (2) deficits on a PAS completed by WVMi in July 2008 – Vacating a Building [in the event of an emergency] and Continence.
- 3) The evidence submitted at the hearing identifies two additional deficits – Grooming and Medication Administration.
- 4) Whereas the Claimant demonstrates only four (4) program qualifying deficits, 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 action of the Department in denying the Claimant's application for 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**