



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

May 20, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 13, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits 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 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 terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
[Redacted]  
BoSS  
WVMI

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

-----,

**Claimant,**

v.

**Action Number: 10-BOR-1020**

**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 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 May 13, 2010 on an appeal filed March 11, 2010 and received by the Hearing Officer on March 24, 2010.

**II. PROGRAM PURPOSE:**

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 sister

Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)

Sarah "Betsy" Carpenter, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 501.3, 501.3.1, 501.3.1.1, 501.3.2 and 501.3.2.1

**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) completed on February 15, 2010

D-3 Notice of Potential Denial dated February 16, 2010

D-4 Denial Notice dated March 5, 2010

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent a medical evaluation to determine if she continues to meet medical eligibility criteria for the program.
- 2) West Virginia Medical Institute (WVMI) Nurse Sarah "Betsy" Carpenter completed a Pre-Admission Screening (PAS) medical assessment on February 15, 2010 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits four (4) qualifying deficits in the areas of physical inability to vacate the building in the event of an emergency, and physical assistance with bathing, grooming and dressing.
- 3) The Claimant was sent a Notice of Potential Denial on February, 16, 2010 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. No additional documentation was received.

- 4) The Claimant was sent a final Denial Notice on March 5, 2010 (D-4).
- 5) The Claimant testified that she has frequent bowel/bladder accidents and had provided incorrect information to the WVMI Nurse on the date of the assessment in regard to incontinence. The Claimant stated that she was extremely embarrassed to provide information about her incontinence and did not give honest answers because she did not attribute much importance to the question at the time of the assessment. The Claimant indicated that she wears protective pads when she goes out of the home. The Claimant testified that she has a severe heart condition, has developed a medical problem with her retina, and relies on her Medicaid card to obtain needed medical services and medications. She did not provide information concerning the number of incontinent episodes she experiences on a weekly basis.

The WVMI Nurse testified that the Claimant reported episodes of both bladder and bowel incontinence during the PAS, but denied the use of incontinence supplies. The Claimant denied having incontinence of bowel in the seven days prior to the PAS and reported one incident of bladder incontinence in the same time period. Therefore, she was rated as being occasionally incontinent of bladder and continent of bowel. The nurse indicated that an individual must have at least three episodes of incontinence per week to be considered incontinent of bladder and/or bowel and receive a deficit in this area.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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 501.3.1.1 (D-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 (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. The Claimant was awarded four (4) deficits on her February 2010 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, no additional deficit is awarded to the Claimant in the area of bladder/bowel incontinence. The Claimant admittedly provided incorrect information regarding incontinence on the date of the PAS and the WVMi Nurse rated this area of functionality based on the information received at that time. The Claimant did not identify the frequency of incontinent episodes during the hearing.
- 3) As no additional deficits can be identified based on information presented during the hearing, the required 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 terminate the Claimant's benefits 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 20th Day of May 2010.**

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**Pamela L. Hinzman  
State Hearing Officer**