



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

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

November 16, 2012

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Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 15, 2012. 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 no longer 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  
----Development Corp.  
BoSS  
WVMI

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

**IN RE:** ----,

**CLAIMANT,**

**v.**

**ACTION NO.: 12-BOR-2224**

**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 telephonically on November 15, 2012, on an appeal filed September 4, 2012.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

**III. PARTICIPANTS:**

----, Claimant  
----, RN/Case Manager, ----Development Corp.  
Kay Ikerd, RN, Bureau of Senior Services  
Courtenay Smith, RN, West Virginia Medical Institute

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 501.5, 501.5.1 and 501.5.1.1

**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 July 19, 2012
- D-3 Notice of Decision dated August 17, 2012
- D-4 Pre-Admission Screening (PAS) completed on May 17, 2011

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Medicaid Program and underwent an annual medical evaluation to determine if she continues to meet medical eligibility criteria for the program.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Courtenay Smith completed a Pre-Admission Screening (PAS) medical assessment on July 19, 2012 (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 functional deficits- physical assistance with bathing, dressing and grooming, and bladder incontinence.
- 3) On August 17, 2012, the Department sent the Claimant a Notice of Decision (D-3), informing her that her ADW benefits would be terminated.
- 4) ----, RN/Case Manager with the ----Development Corp., contended that the Claimant should have received an additional deficit for inability to vacate the building in the event of an emergency. Ms. ---- indicated that the Claimant was likely overstating her abilities on the date of the assessment because she was afraid she would not be allowed to continue living in her home. Ms. ---- testified that she does not believe the Claimant could vacate unassisted in the event of an emergency due to her arthritis and medical conditions. Ms. ---- indicated that she was present during the assessment and tried to question the Claimant about her ability to vacate, however, the Claimant would not admit to a need for physical assistance.

The WVMI Nurse testified that the Claimant reported during the assessment she would be able to vacate the home unassisted in the event of an emergency. She indicated that she could get out of bed and walk out either door without assistance, and could walk down her back steps without using the handrail. She stated that she travels down the back steps unassisted on a daily basis to feed her cats and go to her garden.

Ms. ---- stated that the Claimant may also need physical assistance with eating. However, the WVMI Nurse indicated that the Claimant reported she could feed herself and cut/peel her own foods on the date of the assessment.

Ms. ---- indicated that the Claimant has had triple heart bypass surgery and her condition has deteriorated since the assessment was completed. The Claimant testified that she must stand for about 10 minutes before she can move upon awakening.

5) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (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 nursing home level of care.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (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.

7) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1 (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 July 2012 Aged/Disabled Waiver Program medical evaluation.
- 2) As a result of information provided during the hearing, no additional deficits are awarded to the Claimant. No information was provided to the WVMJ Nurse on the PAS date to indicate the Claimant needed physical assistance to vacate the building in the event of an emergency, or required physical assistance with eating.
- 3) As no additional deficits can be awarded, the Claimant continues to lack the required deficits for continued participation in 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 16th Day of November 2012.**

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**Pamela L. Hinzman**  
**State Hearing Officer**