



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
State Capitol Complex, Building 6, Room 817-G
Charleston, WV 25305**

**Joe Manchin III
Governor**

January 27, 2005

Dear Ms. _____ :

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 19, 2003. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the Aged/Disabled Home and Community-Based Waiver 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 and benefit levels for the Aged/Disabled Home and Community-Based Services Waiver Program are determined based on current regulations. One of these regulations specifies that in order to be eligible for the program, an individual must be approved as medically eligible for nursing facility level of care (WVDHHR Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual Section 500.1).

The information which was submitted at the hearing revealed that you met the medical eligibility criteria as of the time your evaluation was completed in July 2003.

It is the decision of the State Hearing Officer to reverse the proposal of the Department to terminate your benefits under the Aged/Disabled Home and Community-Based Waiver Program.

Sincerely,

Erika H. Young
State Hearing Officer
Member, State Board of Review

cc: [REDACTED] Catholic Community Services
Libby Boggess, BoSS
Oretta Keeney, WVM
Board of Review

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____

ADDRESS: _____

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 24, 2005 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 originally convened on December 19, 2003 on a timely appeal filed September 19, 2003.

It should be noted here that benefits under the Aged/Disabled Home and Community-Based Services Waiver Program have been continued pending a hearing decision.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Aged/Disabled Home and Community-Based Services Waiver is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 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

Case Management Supervisor, Catholic Community Services
Jo Kalt, RN, West Virginia Medical Institute
Libby Bogges, RN, Bureau of Senior Services (participating by telephone)

Presiding at the hearing was Erika H. Young, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

The question to be decided is whether the Department was correct in the proposed termination of the claimant's Aged/Disabled Waiver Program benefits as a result of a determination that she no longer met the medical criteria for the Program.

V. APPLICABLE POLICY

WVDHHR Aged/Disabled Home and Community-Based Services Waiver Policy and Procedure Manual, Section 500.1. Policy Memorandum dated July 24, 2002 re: Revised Eligibility Criteria for Nursing Home/Aged and Disabled Waiver Placement.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

Department Exhibits:

- D-1 Form PAS-2000 dated July 29, 2003
- D-2 Notice of Decision dated August 13, 2003
- D-3 Claimant's Hearing Request date received September 19, 2003
- D-4 WVDHHR Aged/Disabled Home and Community-Based Services Waiver Policy and Procedure Manual Section 500.1
- D-5 Policy Memorandum dated July 24, 2002 re: Revised Eligibility Criteria for Nursing Home/Aged and Disabled Waiver Placement.

Claimant Exhibits:

- C-1 Letter dated November 13, 2003 from M.D.
- C-2 List of Claimant's Medications and Costs

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. WVDHHR Aged/Disabled Home and Community-Based Services Waiver Policy and Procedure Manual at Section 500.1, lists as one of the eligibility requirements that the client must be approved as medically eligible for nursing facility level of care.
2. Policy Memorandum of July 24, 2002 regarding Revised Eligibility Criteria for Nursing Home/Aged and Disabled Waiver Placement specifies that in order to qualify for nursing facility level of care an individual must have a total of five deficits. These deficits are derived from a combination of the following assessment elements of the PAS-2000:

Question #26

- (1) Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)
- (2) Bathing - Level 2 or higher (physical assistance or more)
- (3) Grooming - Level 2 or higher (physical assistance or more)
- (4) Dressing - Level 2 or higher (physical assistance or more)
- (5) Continence - Level 3 or higher (must be incontinent)
- (6) Orientation - Level 3 or higher (totally disoriented, comatose)
- (7) Transferring - Level 3 or higher (one person or two person assist in the home)
- (8) Walking - Level 3 or higher (one person or two person assist in the home)
- (9) 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)

Question #25

In the event of an emergency, the individual is mentally (c) or physically (d) unable to vacate a building.

Question #27

Individual has skilled needs in one or more of these areas – suctioning (g), tracheostomy (h), ventilator (I), parenteral fluids (k), sterile dressings (l), or irrigations (m). (The use of oxygen is not a deficit.)

Question #28

The individual is not (c) capable of administering his/her own medications.

Question # 24

Decubitus - Stage 3 or 4

VII. (Continued)

3. The claimant had been a recipient of the Aged/Disabled Waiver Program. In July 2003, a PAS- 2000 form was completed for the claimant, signed by her physician and submitted to West Virginia Medical Institute for an annual reevaluation of her medical eligibility for the Program.
4. The PAS-2000 form indicated that the claimant was legally blind, that she required

physical assistance with bathing, dressing, and grooming, that she had occasional bladder incontinence, that she was required supervision or an assistive device for walking and transferring, that she could administer her medications with prompting or supervision and that she was physically unable to vacate the building in an emergency.

5. The claimant testified at the hearing that her incontinence was not occasional but that it occurred every day and that it had been that way in July 2003 when the PAS was completed.

VII. DECISION

It is the finding of the Hearing Officer that testimony and evidence established deficits in the areas of bathing, dressing, grooming, continence, and ability to vacate and that the claimant therefore met the medical eligibility criteria in July 2003. It is the decision of the State Hearing Officer to reverse the proposal of the Department to terminate the claimant's benefits under the Aged/Disabled Waiver Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.