

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
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 April 28, 2005 for Mr. \_\_\_\_\_. 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 scheduled on March 22, 2005 on a timely appeal, filed February 18, 2005.

It should be noted here that Mr. \_\_\_\_\_'s Home and Community Based Services Benefits have been continued pending a hearing decision.

A pre-hearing conference was not held between the parties. Mr. \_\_\_\_\_ did not have legal representation in this particular matter.

All parties agreed to provide truthful information during the hearing

**II. PROGRAM PURPOSE:**

The program entitled Home and Community Based Services, 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 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).

**III. PARTICIPANTS:**

\_\_\_\_\_, Son  
\_\_\_\_\_, Case Manager – All Care Home/Community Services  
\_\_\_\_\_, RN – Special Touch Nursing  
Linda Wright, RN – Bureau of Senior Services (BoSS)  
Lisa Goodall, RN – West Virginia Medical Institute (WVMI)

Presiding at the hearing was Ray B. Woods, Jr., M. L. S., State Hearing Officer and, a Member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

Does Mr. \_\_\_\_\_ meet the medical eligibility for continued services, under the Home and Community Based Services Program?

**V. APPLICABLE POLICY:**

WV Provider Manual Chapters 570 PROGRAM ELIGIBILITY FOR CLIENT; 570.1 MEDICAL ELIGIBILITY; 570.1.a PURPOSE; 570.1.b MEDICAL CRITERIA.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**DEPARTMENT'S EXHIBITS:**

- D-1 Memorandum dated 02/09/05 to Mr. \_\_\_\_\_ from BoSS re: Hearing Exhibits
- D-2 WV Provider Manual Chapters 570; 570.1; 570.1.a; 570.1.b
- D-3 PAS-2000 assessed 12/07/04
- D-4 Notice of Denial dated 12/30/04
- D-5 Notice of Potential Denial dated 12/09/04
- D-6 Scheduling Notice dated 02/23/05
- D-7 Request for Hearing dated 01/06/04
- D-8 GroupWise Messages re: Scheduling

**CLAIMANT'S EXHIBITS:**

- C-1 Letter from [REDACTED] M.D.,

**VII. FINDINGS OF FACT:**

- 1) Mrs. Wright reviewed the policy found in the WV Provider Manual Chapters 570 PROGRAM ELIGIBILITY FOR CLIENT; 570.1 MEDICAL ELIGIBILITY; 570.1.a PURPOSE; 570.1.b MEDICAL CRITERIA
- 2) Mrs. Lisa Goodall reviewed Mr. \_\_\_\_\_'s PAS-2000 assessed on December 7, 2004, in the following manner:

Question #24

Decubitus----- **Total = 0**

Question #25

In the event of an emergency, the individual can vacate the building: Physically Unable.

**Total = 1**

Question #26:

a. Eating - 1	Total = 0	
b. Bathing - 1	Total = 0	
c. Dressing - 1	Total = 0	
d. Grooming -2	Total = 1	
e. Cont/Bladder - 1	Total = 0	
f. Cont/Bowel - 1	Total = 0	
g. Orientation - 1	Total = 0	
h. Transferring - 2	Total = 0	
I. Walking - 2	Total = 0	
j. Wheeling - 1	Total = 0	<b>Total = 1</b>

Question #27

None

**Total = 0**

Question #28

The individual is capable of administering his own medications: Prompting/Supervision

**Total = 0.**

3) Mr. \_\_\_\_\_ had a total of two (2) deficits on the PAS-2000 assessed December 7, 2004. Five deficits are needed to be eligible for the Waiver Program.

4) A letter of "POTENTIAL DENIAL" was mailed to Mr. \_\_\_\_\_ on December 9, 2004. It requested additional medical information that may not have been considered.

5) The West Virginia Medical Institute notified Mr. \_\_\_\_\_ by letter dated December 30, 2004 that, he was no longer entitled to receive services under the A/D Waiver Program.

6) The State Hearing Officer received Mr. \_\_\_\_\_' *Request for Hearing* on February 18, 2005.

7) Mr. \_\_\_\_\_ submitted a letter from his father's physician. The letter from \_\_\_\_\_ M. D., did not identify any specific medical problems for Mr. \_\_\_\_\_. It stated in part, "\_\_\_\_\_ is my patient. Due to his multiple medical problems. He has difficulty with his ADL's and needs help to maintain his house clean, as well as, his personal hygiene. I do believe he would benefit from home aid." Ms. Goodall had not received a copy of the letter prior to the hearing.

8) Ms. Pam Johnson, RN, testified that Mr. \_\_\_\_\_ has refused all assistance with his activities of daily living. In addition, Ms. Johnson stated that Mr. \_\_\_\_\_ does not meet the criteria for the Aged and Disabled Waiver Program.

9) The State Hearing Officer rendered a decision at the conclusion of the Fair Hearing. Mr. \_\_\_\_\_ does meet the medical eligibility for the Aged and Disabled Waiver Program.

## **VIII. CONCLUSIONS OF LAW:**

### **1) WV Provider Manual Chapter 570 *PROGRAM ELIGIBILITY FOR CLIENT:***

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

### **2) WV Provider Manual Chapter 570.1 *MEDICAL ELIGIBILITY:***

A QI under contract to BSS determines medical eligibility for the A/D Waiver Program.

### **3) WV Provider Manual Chapter 570.1.a *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 ADW services receives an appropriate LOC that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

**4) WV Provider Manual Chapter 570.1.b MEDICAL CRITERIA:**

An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. #24: Decubitus - Stage 3 or 4
- B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
- C. #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)
  - Grooming - Level 2 or higher (physical assistance or more)
  - Dressing - Level 2 or higher (physical assistance or more)
  - Continence - Level 3 or higher (must be incontinent)
  - Orientation - Level 3 or higher (totally disoriented, comatose)
  - Transfer - Level 3 or higher (one person or two persons assist in the home)
  - Walking - Level 3 or higher (one person assist 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.)
- D. #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.
- E. #28: Individual is not capable of administering his/her own medications.

**IX. DECISION:**

It is the decision of this State Hearing Officer to UPHOLD the Department's proposal in this particular matter.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29