

**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 March 15, 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 convened on March 15, 2005 on a timely appeal, filed January 19, 2005.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) 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 Home Health Aide, Veterans Administration
Nada Lind, WVMH (by phone)
Kay Ikerd, BoSS (by phone from BoSS)

Presiding at the hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Agency was correct in their decision to deny eligibility for services under the Aged/Disabled Waiver (HCB) Program

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 570 & 590

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits:

Exhibit D-1 A/DW, Aged/Disabled Home and Community Based Services Manual
' 560.1- 570.1b

Exhibit D-2 Eligibility Determination, dated October 28, 2004

Exhibit D-3 Pre-Admission Screening (PAS)-2000, dated October 28, 2004

Exhibit D-4 Notice of Potential Denial, dated December 06, 2004

Exhibit D-5 Notice of Denial, dated December 22, 2004

VII. FINDINGS OF FACT:

- (1) The Claimant at the time of the Pre-Admission Screening (PAS) was a 57 year old male with a diagnosis of a Seizure Disorder. He had been seizure free for one year. He suffers from memory and communication problems as a result of a previous head injury. He has had a partial hip replacement and uses a cane and walker to assist him in transferring and ambulating.
- (2) Mr. _____ drives himself to his own Doctor appointments. He has a Home Health Aide who comes into his home approximately 4 days a week. She was present during the PAS evaluation. She helps with cooking, cleaning, laundry and runs errands for Mr. _____. She does not assist in his personal needs.
- (3) The Claimant independently baths, dresses and grooms. He must use a chair inside the shower to bath and again outside the shower to dry off. He places the chair where he needs it. Bathing is a difficult task for him and therefore he doesn't always bath daily.
- (4) The PAS evaluation completed on October 28, 2004 assessed the Claimant as having no qualifying deficits. It noted that Mr. _____ could vacate with supervision in the event of an emergency and could administer his own medication. It indicated that he was oriented, continent of both bladder and bowel and could transfer and walk with and assistive device.
- (5) The Claimants functional abilities in the home are hampered by his disabilities. Completing a task takes much effort and the use of assistive devices.

- (6) Included in the evaluating Nurse's overall comments is: "Nurse observed client stand and ambulate independently in his bedroom. Nurse observed client walk over to a chair at the side of the room, lean over and reach over the back of the chair to retrieve a bag of medicine for the RN to list. Client reports he uses his cane at times in the home. HM present during assessment. When asked what she routinely does for client, HM reports she cooks meals, cleans, does laundry and runs errands for him. Client reports he stands in the shower and gets his bath. Client reports he shampoos his own hair in the shower. He reports he is able to clip his own fingernails and toenails. Client reports he shaves himself with an electric razor."

VII. Section Continued:

- (7) Mr. _____ states that he was missing doses of his medication and could use help with remembering to take his medication. He also reports that he has some problems with bladder control, but it is mainly with starting his stream and he has minimal problems with incontinence.

VIII. CONCLUSIONS OF LAW:

- (1) **Aged/Disabled Home and Community Based Services Manual # 570 - Program Eligibility for Client:**

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

- C. Be approved as medically eligible for NF level care.

- (2) **Aged/Disabled Home and Community Based Services Manual ' 570 - Program Eligibility for Client:**

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

- B. Be a permanent resident of West Virginia. The individual may be de-institutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.

- (3) **Aged/Disabled Home and Community Based Services Manual ' 570.1.a. - Purpose:**

The purpose of the medical eligibility review is to ensure the following:

- (1) New applicants and existing clients are medically eligible based on current and accurate evaluations.
- (2) 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.

- (3) The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

(4) Aged/Disabled Home and Community Based Services Manual # 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.

VIII. Section Continued:

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 person assist in the home)

Walking----- Level 3 or higher (one person or two 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 B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.

E. #28: The individual is not capable of administering his/her own medication.

IX. DECISION:

In order to qualify for Aged/Disabled Waiver services, an individual must be found to have at least five deficits at the time of the Pre-Admission Screening.

It had been determined that Mr. _____, at the time of the PAS, had no qualifying deficits. Testimony, evidence, and the evaluating Nurse's comments on the (PAS) support a finding that this claimant does accomplish his personal care needs independently. He does this however with much effort. It is clear that his current Home Health Aide through the Veterans Administration does not assist in his personal needs. She helps with cooking, house cleaning, laundry and running errands.

After reviewing the information presented during the hearing and the applicable policy and regulations, I find that the claimant was assessed correctly as having no qualifying deficits. I am ruling to **uphold** the Agency's actions to deny the benefits and services 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