



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**  
**Board of Review**  
**P. O. Box 2590**  
**Fairmont, WV 26555-2590**

**Joe Manchin III**  
**Governor**

**Martha Yeager Walker**  
**Secretary**

April 12, 2005

\_\_\_\_\_  
[Redacted]

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 24, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Medicaid, Aged/Disabled Title XIX (Home & 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.

The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to 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. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b (11/1/03) ].

The information submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community-Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to terminate your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
WVMI  
BoSS  
[Redacted] CM, First Care Services

**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 12, 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 convened on March 24, 2005 on a timely appeal filed January 19, 2005.

It should be noted here that benefits under the Medicaid Title XIX Waiver (HCB) Program have continued.

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  
\_\_\_\_\_, Homemaker RN, \_\_\_\_\_ Co. Senior Center  
\_\_\_\_\_, RN, CM, First Care Services

Julia Foster, RN, WVMI

Kay Ikerd, RN, BoSS (by phone from BoSS)

Presiding at the hearing was Thomas E. Arnett, 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 claimant continues to be medically eligible for services under the Aged/Disabled Waiver (HCB) Program.

#### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual ' 560 & 570

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

Department=s exhibits

D-1 Termination noticed dated January 5, 2005.

D-2 Medical Assessment, PAS-2000, dated 10/25/04.

D-3 Aged/Disabled Home and Community Based Services Manual ' 560 & 570

#### **VII. FINDINGS OF FACTS:**

1. The Claimant=s Aged & Disabled Waiver, hereinafter ADW, case was undergoing an annual medical reevaluation to verify continued medical eligibility.
2. WVMI completed a medical assessment (D-2) on the Claimant and determined that she is no longer medically eligible to participate in the ADW Program.
3. A termination notice (D-1) was sent to the Claimant on January 5, 2005. This notice includes some of the following pertinent information:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate/deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission screening Form), indicated deficiencies in 2 areas – Bathing and Dressing.

4. Julia Foster reviewed the Medical Assessment (D-2) that she completed on the Claimant on October 25, 2004, and testified that the Claimant demonstrates two (2) program qualifying deficits – bathing and dressing. She stated that additional medical information was submitted subsequent to the assessment but the additional information failed to establish medical eligibility.

5. The Claimant's testified that she has a diagnosis of Postural Orthostatic Tachycardia Syndrome (POTS Syndrome), a condition that makes her body unable to regulate blood pressure and heart rate. She cannot walk far and there are times when she can't stand because she will pass-out. She stated that she has good and bad moments but she doesn't know when it's going to happen. She stated that she is taking medication for her condition and it has helped some. She is still able to drive as her condition doesn't usually affect her when she is sitting.

## **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 of care.

2. Aged/Disabled Home and Community Based Services Manual ' 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.

3. Aged/Disabled Home and Community Based Services Manual ' 570.1.b. - Medical Criteria:

An individual must have five (5) 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 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 (c) capable of administering his/her own medications.

4. Policy requires that an eligible individual must have a total of five (5) qualifying deficits in specific categories of nursing services. The evidence presented at the hearing reveals that the Claimant exhibits only two (2) qualifying deficits. While the Claimant's condition limits some of her abilities, she clearly does not meet the "Nursing Facility" level of care criteria required for this program.

## **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to terminate your 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.