



Joe Manchin III
Governor

**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
Board of Review
4190 West Washington Street
Charleston, West Virginia 25313
Email: raywoods@wvdhhr.org**

Martha Yeager Walker
Secretary

June 6, 2005

Dear Ms._____;

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 22, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the Aged and Disabled 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 and benefit levels for Aged and Disabled Waiver Services are determined based on current regulations. One of these regulations states:

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. (WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT).

The information submitted at the hearing revealed: You meet the medical eligibility for continued services.

It is the decision of the State Hearing Officer to REVERSE the action of the Department in this particular matter.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Kay Ikerd, RN – B o S S
Oretta Keeney, RN – W V M I
[REDACTED] Case Manager – All Care Home/Community 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 June 6, 2005 for Ms._____.

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 for April 30, 2005, on a timely appeal filed March 3, 2005. The hearing was rescheduled for April 22, 2005, due to the State Hearing Officers error.

It should be noted here that, Ms. _____ was receiving benefits under the Aged and Disabled Waiver Program at the time of the hearing. A pre-hearing conference was not held between the parties and, Ms. _____ did not have legal representation.

All persons giving testimony were placed under oath. A pre-hearing conference was not held between the parties.

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

_____, Claimant
_____, Case Manager – All Care Home/Community Services
_____, Homemaker – _____ County Council on Aging
Kay Ikerd, RN – Bureau of Senior Services ***
Michelle Wiley, RN – West Virginia Medical Institute (WVMI) ***

*** Participated by Conference Call

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. QUESTION(S) TO BE DECIDED

Does Ms. _____ meet the eligibility criteria for the Aged and Disabled Waiver Services Program?

V. APPLICABLE POLICY

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- D-1 WV Provider Manual Chapters 570; 570.1; 570.1.a & 570.1.b
- D-2 PAS-2000 assessed 11/22/04
- D-3 Letter dated 12/23/04 from WVMi to Ms. [REDACTED] – Terminating Services
- D-4 Letter dated 12/06/04 from WVMi to Ms. [REDACTED] – Potential Denial
- D-5 Memorandum dated 02/22/05 from BoSS to Ms. [REDACTED] – Hearing Exhibits
- D-6 Scheduling Notice dated 03/11/05 (Rescheduled)
- D-7 Scheduling Notice dated 03/08/05 (Initial Notice)
- D-8 Request for Hearing dated 12/24/05
- D-9 GroupWise Messages re: Scheduling

VII. FINDINGS OF FACT

- 1) This issue involves the denial of services under the Home and Community Based Services Program. The assessment completed on November 22, 2004 indicates Ms. _____ does not meet the continued eligibility criteria for services.
- 2) Ms. Kay Ikerd, RN, of the Bureau of Senior Services, reviewed the Aged and Disabled Waiver Program Eligibility Criteria.
- 3) Mrs. Michelle Wiley, RN reviewed Ms. [REDACTED]'s PAS-2000 assessment completed on November 22, 2004, in the following manner:

Question #24

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

Question #25

In the event of an emergency, the individual can vacate the building. With Supervision. **Total = 0**

Question #26:

a. Eating - 1	Total = 0	
b. Bathing - 2	Total = 1	
c. Dressing - 2	Total = 1	
d. Grooming -2	Total = 1	
e. Cont/Bladder - 3	Total = 1	
f. Cont/Bowel - 3	Total = 0	
g. Orientation - 2	Total = 0	
h. Transferring - 2	Total = 0	
i. Walking - 2	Total = 0	
j. Wheeling - 1	Total = 0	Total = 4

Question #27

None **Total = 0**

Question #28

The individual is capable of administering his own medications: With Prompting/Supervision. **Total = 0.**

- 4) Ms. _____ had a total of four (4) deficits on the PAS-2000 assessment dated November 22, 2004.
- 5) The West Virginia Medical Institute sent a letter of Potential Denial to Ms. _____ on December 6, 2004. The letter stated there were only four (4) deficits on the PAS. Ms. _____ was permitted to submit additional documentation within two weeks of the letter.
- 6) No additional documentation was received for further review by the West Virginia Medical Institute. On December 23, 2004, WVMI notified Ms. _____ that she had been denied for the Home and Community Based Services Program.
- 7) Ms. Wiley's Overall Comments stated in part, "When I arrived, client was walking in the apartment using her walker. Clients gait was unsteady. Client had difficulty with the right foot as she walked. The foot appeared to drag when client walked. Client had difficulty as she walked."
- 8) Based upon Ms. Wiley's Overall Comments on the Claimants gait, an additional deficit is awarded in the area of "Unable to vacate the building in the event of an emergency."
- 9) Ms. _____ meets the continued eligibility for the Aged and Disabled Waiver Program.

VIII. CONCLUSIONS OF LAW

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.

WV Provider Manual Chapter 570.1 MEDICAL ELIGIBILITY:

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

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.

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 REVERSE the action of the Department to deny the application for the Aged and Disabled Waiver Program.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29