

**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 May 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 was convened on May 12, 2005 on a timely appeal, filed February 7, 2005.

All persons giving testimony were placed under oath.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

**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  
\_\_\_\_\_, Potomac Highlands Support Services (PHSS)  
\_\_\_\_\_, Homemaker Nurse, Hampshire County Commission on Aging  
\_\_\_\_\_, care giver  
\_\_\_\_\_, WVMI (by phone)  
\_\_\_\_\_, 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 discontinue eligibility for services under the Aged/Disabled Waiver (HCB) Program

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## **V. APPLICABLE POLICY:**

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

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

Department's Exhibits:

- Exhibit D-1 Aged Disabled Waiver Services Manual 560.1 570.1b
- Exhibit D-2 Eligibility Determination, dated November 1, 2004
- Exhibit D-3 Pre-Admission Screening (PAS)-2000, dated November 1, 2004
- Exhibit D-4 Notice of Denial dated February 17, 2005
- Exhibit D-5 Notice of Potential denial dated January 7, 2005
- Exhibit D-6 Statement from Dr. \_\_\_\_\_ of condition

## **VII. FINDINGS OF FACT:**

- (1) The Claimant is an 88 year old female who has diagnoses of Congestive Heart Failure and Chronic Obstructive Pulmonary Disease. Ms. \_\_\_\_\_ Aged Disabled, Waiver (ADW) eligibility was undergoing an annual reevaluation in November 2004.
- (2) Ms. \_\_\_\_\_ resides alone with the help of her homemaker visits. Her Podiatrist, Dr. \_\_\_\_\_, provided a statement regarding a condition she has, which hampers her ability to ambulate. He states, "\_\_\_\_\_ has severe foot deformities and severely painful corns and calluses making ambulation very difficult".
- (3) The PAS evaluation completed on November 1, 2004 assigned Ms. \_\_\_\_\_ a deficit in Vacating, Bathing, Dressing and Grooming. Transferring and walking were assessed at a level 2 requiring supervision or assistive devise. Bladder and Bowel incontinence were each assessed at a level 2 due to occasional incontinence.
- (4) The areas of uncertainty identified by Ms. \_\_\_\_\_ were transferring and bladder incontinence. Ms. \_\_\_\_\_ admittedly wears poise pads on a regular basis however; she insists that she has very few accidents. She says that she will occasionally have a little leaking if she cannot get to the toilet in time. She indicates that this occurs less than three times a week. She explains that she has pain in her feet, which makes it difficult to get around, but states that she can get from her bed to her chair, but chooses to sleep in her lift chair, which reclines. She told of a situation when she was getting out of bed and she hit her foot on something and the bleeding was difficult to stop. She feels safer being in the chair because it is closer to the door. She states that she can get around her apartment without help. Ms. \_\_\_\_\_ observed this claimant stand and go to the bathroom using furniture for stability. Ms. \_\_\_\_\_ reported to the nurse that she gets short of breath when she walks from the kitchen to the living room.
- (5) After Dr. \_\_\_\_\_ submitted his statement for WVMi to review, Ms.

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\_\_\_\_\_ contacted him and concluded that her assessment of level 2 was still appropriate for transferring and walking.

- (6) The evaluating nurse asked during the assessment if Ms. \_\_\_\_\_ had times on the weekends that she had to stay in her chair or bed until someone comes to help her and she replied with a “NO”. She told the nurse that she does get lonely and can’t wait till the girl comes back on Monday.

## 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:

- 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.

### (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 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.

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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 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 Ms. \_\_\_\_\_, at the time of the PAS, had only four deficits which were in the areas of bathing, grooming, dressing and vacating. Testimony did indicate that Ms. \_\_\_\_\_ has pain when transferring and walking, but evidence and testimony did not prove that these tasks were tasks that Ms. \_\_\_\_\_ could not perform on her own with the help of assistive devices. It became clear that Ms. \_\_\_\_\_ does have some problems with urinary leaking and that she does wear poise pads. She however did concur with what was reported on the PAS to be occasional leakage of less than three (3) times per week. Ms. \_\_\_\_\_ appeared to be oriented at this hearing and this Hearing Officer perceived her testimony to be credible.

After reviewing the information presented during the hearing and the applicable policy and regulations, I find that the claimant was accurately assessed as having only four (4) qualifying deficits. I am ruling to uphold the Agency's actions to discontinue the benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

## X. RIGHT OF APPEAL:

See Attachment.

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**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

