



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 9, 2005

Dear Mrs. _____;

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 27, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to deny your mothers 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 do not meet the medical eligibility for continued services.

It is the decision of the State Hearing Officer to UPHOLD the proposal 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 – CWVAS, Inc.

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 9, 2005 for Mrs._____.

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 27, 2005, on a timely appeal filed February 7, 2005.

It should be noted here that, Mrs. _____ was receiving benefits under the Aged and Disabled Waiver Program during the Fair Hearing process. A pre-hearing conference was not held between the parties and, Mrs. _____ 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

_____, Daughter on behalf of _____
_____, Case Manager – Central West Virginia Aging Services, Inc.
_____, Caregiver – Central West Virginia Aging Services, Inc.
Sue Bailey, RN – West Virginia Medical Institute (WVMI)
Kay Ikerd, RN - Bureau of Senior Services (BoSS)

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 Mrs _____ 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

DEPARTMENT'S EXHIBITS:

- D-1 WV Provider Manual Chapters 570; 570.1; 570.1.a & 570.1.b
- D-2 PAS-2000 assessed 01/04/05
- D-3 Letter dated 01/26/05 from WVMI to Mrs. _____ – Terminating Services
- D-4 Letter dated 01/12/05 from WVMI to Mrs. _____ – Potential Denial
- D-5 Medical Necessity Reevaluation Request dated 11/22/04
- D-6 Memorandum dated 02/28/05 from BoSS to Mrs. _____ – Hearing Exhibits
- D-7 Scheduling Notice dated 03/22/05
- D-8 Request for Hearing dated 02/02/05
- D-9 GroupWise Messages (1) re: Scheduling

CLAIMANTS EXHIBITS:

- C-1 Letter from _____ Jr., M.D., dated 04/26/05
- C-2 Letter from Mrs. _____
- C-3 Letter from _____, Daughter, dated 01/14/05
- C-4 Letter from _____, Neighbor, dated 03/29/05

VII. FINDINGS OF FACT

- 1) This issue involves the denial of services under the Home and Community Based Services Program. The re-evaluation assessment was completed on January 4, 2005. It indicates that, Mrs. _____ does not meet the medical eligibility for continued services.
- 2) Ms. Kay Ikerd, RN, reviewed the Aged and Disabled Waiver Program Eligibility Criteria.
- 3) Mrs. Sue Bailey, RN reviewed Mrs. _____'s PAS-2000 assessed on January 4, 2005, 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 - 2	Total = 1	
b. Bathing - 1	Total = 0	
c. Dressing - 1	Total = 0	
d. Grooming -1	Total = 0	
e. Cont/Bladder - 3	Total = 1	
f. Cont/Bowel - 3	Total = 0	
g. Orientation - 2	Total = 0	
h. Transferring - 1	Total = 0	
i. Walking - 2	Total = 0	
j. Wheeling - 1	Total = 0	Total = 2

Question #27

None **Total = 0**

Question #28

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

- 4) Mrs. _____ had a total of three (3) deficits on the PAS-2000 assessed on January 4, 2005.
- 5) There was some question about the early arrival of the WVMi Nurse. Mrs. _____ was coming from out of town and was not present for the assessment.
- 6) Mrs. _____ and Ms. _____ believe Mrs. _____ needs assistance with Bathing, Dressing and Grooming. They requested the completion of another assessment. The request was denied by the State Hearing Officer because the assessment was completed within the past six (6) months.
- 7) The West Virginia Medical Institute sent a letter of Potential Denial to Mrs. _____ on January 12, 2005. The letter stated there were only three (3) deficits on the PAS. Ms. _____ was permitted to submit additional documentation within two weeks of the letter.
- 8) On January 26, 2005, the WVMi notified Mrs. _____ that she had been denied for the Home and Community Based Services Program.
- 9) Mrs. _____ completed a Request for Hearing on February 2, 2005
- 10) The letters from Mrs. _____'s Physician, Daughter and, Neighbor did not change the outcome of the deficits found on the January 14, 2005 assessment.
- 11) A decision was rendered at the conclusion of the Fair Hearing.

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 UPHOLD the proposal of the Department to deny the application for the Aged and Disabled Waiver Program. Mrs. _____ had three (3) of the required five (5) deficits on the Assessment dated January 4, 2005. She does not meet the medical eligibility criteria for continued services.

The Department's proposal was proper and correct.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.