



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 14, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 30, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue services under the Aged Disabled Waiver, A/DW, 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 for the A/DW program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who 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, where services can be provided. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b (11/1/03)].

The information which was submitted at your hearing revealed that at the time of the December 27, 2004 Pre-Admission Assessment, you did not meet the eligibility criteria for the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to uphold the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] PHSS - Boggess, BoSS - Keeney, WVM

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

Claimant.

v. Action Number:

**West Virginia Department of
Health and Human Resources.**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 30, 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 June 30, 2005 on a timely appeal, filed March 14, 2005.

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

II. PROGRAM PURPOSE:

The Program entitled Aged Disabled Waiver 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's Witnesses:

_____, claimant

_____, Potomac Highlands Support Services

_____, Office Manager, _____ Community Care

_____, claimant's sister

_____, claimant's niece

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone

Nada Lind, Nurse WVMi by phone

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(s) to be decided is whether the Agency was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual 570, 570.1, 570.1.a,b,c
- D-2 Eligibility Determination dated December 27, 2004
- D-3 Pre-Admission Screening, PAS, completed December 27, 2004
- D-4 Denial letter dated March 21, 2005
- D-5 Potential Denial letter dated March 4, 2005

VII. FINDINGS OF FACT:

- 1) Claimant is a 68-year-old male who has primary diagnosis of Mental Retardation, Hypertension, High Cholesterol, and Depression. Mr. _____ does not speak. He is prescribed medication to calm a potentially aggressive behavior that he exhibits due to brain tumors.

- 2) Mr. _____' Aged Disabled Waiver eligibility was undergoing an annual evaluation on December 27, 2004. A Pre-Admission Screening (PAS) was completed in the home with the claimant and his sisters _____ and _____ present. This evaluation assigned only three (3) deficits in the area of grooming, incontinence and vacating. A level two (2) was assigned in the areas of Transferring and Walking which would not constitute a deficit assignment.
- 3) The areas in question raised at this hearing were in the claimant's ability to bath and dress without the assistance of others. The claimant has some paralysis in one of his legs. Both homemaker and sister, _____ advised the evaluating nurse that Mr. _____ baths and dresses himself. The homemaker reported to the nurse that his bath is done before she gets to the home. She also reported that even when she is at the home, Mr. _____ dresses himself.
- 4) _____ who is Mr. _____'s sister and resides with him, testified at the hearing that she did not tell the nurse that Mr. _____ could bath himself and dress himself. She testified that he could not bath himself. She then testified that she helps him in the tub and she lays his clothes out. She first testified that he could put his clothes on by himself and later testified that he needed help with dressing.
- 5) Mr. _____ when asked if he could wash himself and zip his own pants, he shook his head yes.
- 6) Ms. _____, who is the claimant's niece and representative for both _____ and _____, states that she lives 4 blocks down the street from them. When asked what she has helped Mr. _____ do, she stated that she has had to help calm him down.
- 7) The evaluating nurse reports that she had to rely mostly on the answers provided by the claimant's sister, _____, as _____ appeared to display some evidence of mental retardation.
- 8) Aged/Disabled Home and Community Based Services Manual § 570 – Program Eligibility for Client:

Applicants for the A/DW 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 A/DW Program as an alternative to NF care.

- 8) 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 A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
 - C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.
- 9) 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 A/DW 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 capable of administering his/her own medication.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits in order to qualify medically for the A/DW program benefits. This

claimant was assessed at the time of the PAS to have three (3) qualifying deficits in the areas of Grooming, Incontinence and Vacating.

- 2) Areas of concern raised at the hearing were in the areas of Bathing and Dressing which are listed in item C. #26, of Chapter 570.1.b. In order to be assigned a deficit in these areas, it would need to be proven that the claimant was unable to perform these functions without the physical assistance of others. Due to the claimant's mild paralysis, it is reasonable to believe that he does require some hands on assistance to enter the bath safely. Testimony regarding the claimant's need for physical assistance in the area of dressing was not credible or convincing.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I am ruling that the claimant should have been assessed with an additional deficit in the area of bathing. I could not conclude from testimony that this claimant is not able to dress himself. My ruling is 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

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of July, 2005.

Sharon K. Yoho
State Hearing Officer