



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

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

December 22, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 13, 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 June 7, 2005 Pre-Admission Screening (PAS) 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
Boggess, BoSS - Keeney, WVMI - [REDACTED] CWAS

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

_____,

Claimant,

v.

Action Number: 05-BOR-6364

**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 December 13, 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 December 16, 2005 on a timely appeal, filed August 4, 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

_____, Central WV Aging Services
_____, RN, Senior Monongalians
_____, Homemaker

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by speakerphone
Kemberly Honaker, Nurse WVMi by speakerphone

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:

Departments' Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual 570, 570.1, 570.1.a
- D-2 Pre-Admission Screening, PAS, completed June 7, 2005
- D-3 Eligibility Determination dated June 7, 2005
- D-4 Notice of potential denial, dated June 16, 2005
- D-5 Notice of denial, dated July 26, 2005

Claimant's Exhibits:

- C-1 Letter from Dr. _____

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 65-year-old female who has primary diagnosis of Elephantitis, Degenerative Joint Disease, Diabetes Mellitus type II and Chronic Venous Stasis Ulcers.

- 2) WV Medical Institute completed an annual evaluation on Ms. _____'s active A/DW case on June 7, 2005 in the claimant's home. The nurse completed the evaluation with information gathered from the claimant.
- 3) The evaluating nurse assigned four (4) qualifying deficits in the areas of vacating in the event of an emergency, bathing, grooming and incontinence.
- 4) The claimant and her witnesses raised issues in the areas of eating and transferring.
- 5) Ms. _____ is able to eat without hands on assistance. She does avoid eating foods that would need to be cut on her plate. She can cut meats with difficulty and she has some difficulty swallowing some types of food. She advised the evaluating nurse that she did not need assistance with eating.
- 6) The claimant does need hands on assistance in transferring to her scooter however; she does not use the scooter inside the home. She has needed more help to transfer in the recent past, but did need occasional assistance with transferring during the time of the PAS. The claimant's homemaker, Ms. [REDACTED] has found Ms. _____ recently to have slept in her chair instead of going to bed. Ms. _____ uses her cane to lift her legs up into the bed. She reports that it is easier to get out of bed than it is to get into bed. Ms. [REDACTED] did not observe the claimant transfer or ambulate during the PAS but reports that Ms. _____ can transfer and ambulate independently the majority of the time. Dr. [REDACTED] writes in his letter dated June 21, 2005: "I feel due to the chronic Elephantitis/Lymphedema of Mrs. _____'s legs that she does at times require assistance with transfer, especially in and out of the shower. The evaluating nurse did assign a deficit in bathing due to the need for assistance in transferring to the show
- 7) 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.
- 2) The PAS completed on June 7, 2005 assigned three (3) deficits in item C. #26, of Chapter 570.1.b in the areas of grooming, bathing and incontinence. It assigned one (1) deficit in item #25 for inability to vacate in an emergency.

- 3) Testimony and evidence presented regarding her transfer and eating needs was not convincing enough to this Hearing Officer to make a determination that the nurse should have assessed additional deficits in those areas. The PAS determines the client's needs inside the home during the time of the PAS. Ms. _____ has recently been requiring more assistance with transfer than she did in June 2005 when the PAS was completed.

IX. DECISION:

After reviewing the information presented during this hearing, the applicable policy and regulations, it is the finding of this hearing officer that the claimant should have been assessed with four (4) qualifying deficits at the time of the June 2005 assessment. 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

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of December 2005.

Sharon K. Yoho
State Hearing Officer