



**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 12, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 29, 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 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 July 7, 2005 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under 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] CCS - Boggess, BoSS - Keeney, WVMI

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

_____,

Claimant,

v.

Action Number: 05-BOR-6442

**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 November 29, 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 November 29, 2005 on a timely appeal, filed August 11, 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

_____ case manager, Catholic Community Services

_____ Family Services

_____, claimant's son

_____, claimant's neighbor

Department's Witnesses:

Libby Boggess, Bureau of Senior Services by phone

Debbie LeMasters, WVMi nurse, 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 Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §570**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §570, 570.1 a,b.

D-2 Pre-Admission Screening, PAS, completed July 7, 2005

D-3 Eligibility Determination dated July 7, 2005

D-4 Notice of potential denial dated July 12, 2005

D-5 Notice of termination dated July 27, 2005

VII. FINDINGS OF FACT:

- 1) Ms._____ is a 56-year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on July 7, 2005.
- 2) A Pre-Admission Screening (PAS) was completed in the home with the claimant and her homemaker, Tracy present. This PAS evaluation determined that the claimant had only three (3) qualifying deficit. The evaluating nurse assigned one deficit for bathing, one for grooming and one for incontinence.

- 3) This claimant has primary diagnosis chronic obstructive pulmonary disease (copd), hyperlipidemia and rheumatic heart disease.
- 4) Issues brought up at the hearing by the claimant and her witnesses were in the areas of dressing, ambulation, eating, orientation and vacating.
- 5) The claimant does dress herself. She has some difficulty with bras and can not do buttons. She does not wear clothing requiring buttoning. The evaluating nurse observed ornamental buttons on the claimant's clothing at the PAS and made the assumption that since Ms. _____ advised her that she had dressed herself, that she was able to button her clothing.
- 6) Ms. _____ at the time of the PAS had little difficulty with ambulation. She uses a walker. Indication is that Ms. _____ has become weaker in the past few months and ambulation has become more difficult.
- 7) The claimant does have difficulty cutting meats. The nurse's comments on the PAS indicate that the claimant said she could cut up her own food. It is not known if the nurse specifically asked about cutting up meats. Ms. _____ receives medical treatment for a reported choking problem and has aspirated cereal.
- 8) Ms. _____ has some short term memory loss but; the nurse found the claimant to be oriented at the evaluation.
- 9) The claimant regularly goes off her oxygen and goes out on to her porch to smoke cigarettes. It is reported that she is able to exit and reenter the home independently. Concerns were raised regarding there being no handrail to aid her in getting off the porch.
- 10) During the time of the PAS, the client was much stronger than she is reported to be at this date. The claimant has fallen in previous weeks.
- 11) 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.
- 12)** 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.
- 13)** 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 be assigned five (5) qualifying deficits to qualify medically for the Aged Disabled Waiver program. At the time of the PAS the nurse assigned the claimant only three (3) qualifying deficit. These were in bathing, grooming and incontinence.
- 2) The issues raised at the hearing were in the areas of dressing, eating, ambulating and orientation which are listed in 570.1.c #26 and in vacating which is item #25. It cannot be concluded by evidence or testimony of this claimant's caregivers that the nurse should have assigned additional deficits in dressing, ambulating, orientation or vacating, at the time of the PAS. Testimony does support that the claimant does require assistance in cutting up solid foods to avoid choking. This claimant appears to have become weaker in the months following the PAS evaluation however; the evaluation must determine the condition of the claimant on the day of the PAS. At the time of the PAS, the nurse should have assigned an additional deficit for eating which would still lead to a determination of ineligibility.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse should have assigned four (4) qualifying deficit at the PAS. With the authority granted to me by the WV State Board of Review I am further ruling to **uphold** the Agency's proposed action to discontinue this claimant's 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 12th Day of December 2005.

Sharon K. Yoho
State Hearing Officer