



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

June 6, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 16, 2006. 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 December 9, 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], PHSS - Boggess, BoSS - [REDACTED], WVMI

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

\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 06-BOR-1033**

**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 May 16, 2006 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 16, 2006 on a timely appeal, filed February 1, 2006.

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 PHSS

\_\_\_\_\_, Homemaker RN, Aging and Family Services

\_\_\_\_\_, Homemaker

Department's Witnesses:

Connie Tetrick, Bureau of Senior Services by phone

\_\_\_\_\_, WVMi nurse

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 December 21, 2005

D-3 Eligibility Determination dated December 21, 2005

D-4 Notice of potential denial dated December 28, 2005

D-5 Notice of termination dated January 25, 2006

**Claimant's Exhibits:**

C-1 Letter from claimant dated January 9, 2006

C-2 Letter from Dr. \_\_\_\_\_

**VII. FINDINGS OF FACT:**

- 1) Ms. \_\_\_\_\_ is a 45-year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on December 21, 2005.
- 2) The claimant has cerebral palsy, which hinders her functional abilities in her home.

- 3) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant, her husband and her homemaker present. The evaluating nurse determined that the claimant had only four (4) qualifying deficits. She assigned a deficit for Ms. \_\_\_\_'s need for physical assistance in bathing, grooming, dressing and transferring.
- 4) The issues addressed by the claimant's witnesses were in the areas of walking and vacating.
- 5) During the evaluation, the claimant advised the nurse that she was able to ambulate in her home using a cane or by holding on to furniture for support. She told the nurse that she does need physical assistance with walking outside of her home but that she does not need physical assistance in her home.
- 6) Exhibit (C-1), the claimant's letter does address difficulty in walking in her home, but does not indicate the need for assistance from others. Exhibit (C-2), Dr. [REDACTED] letter addresses her abnormal gait but does not indicate the need for physical assistance in walking in her home.
- 7) The claimant has fallen in her apartment and has needed physical assistance to get back up. Testimony was given regarding a fall the claimant had soon after surgery. Another fall was addressed which occurred when attempting to transfer from bed. Her bed has been lowered to help prevent falls when transferring from her bed.
- 8) The claimant's witnesses and her doctor are concerned about Ms. \_\_\_\_'s ability to vacate in the event of an emergency due to her slow gait.
- 9) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)-Program Eligibility for client:

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

- C. Be approved as medically eligible for NF Level of Care.
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- 10) Aged/Disabled Home and Community-Based Services Manual Section 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.

**11) Aged/Disabled Home and Community-Based Services Manual Section 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).

- |               |   |
|---------------|---|
| 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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)       |
| 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 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. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

## **VIII. CONCLUSIONS OF LAW:**

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMi nurse assigned the claimant only four (4) qualifying deficits in the areas of bathing, dressing, grooming and transferring.
- 2) The issues raised at the hearing were in the areas of walking and vacating. It could not be concluded by testimony and evidence that this claimant needs hands on assistance for walking in her apartment. She is able to ambulate independently in her home using her cane and furniture. She does require physical assistance for transferring and the evaluating nurse did assign a deficit for transferring. Policy stipulate that to be assessed a deficit for vacating, the client must be assessed a level III for walking, needing hands on assistance at all times for walking. This claimant is not in need of nursing facility level of care.

## **IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse correctly assessed the claimant with four (4) qualifying deficits at the PAS. With the authority granted to me by the WV State Board of Review, I am ruling to **uphold** the Agency's proposed action to discontinue this claimant's services under the Aged/Disabled Title XIX (HCB) Waiver program

## **IX. RIGHT OF APPEAL:**

See Attachment

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 6<sup>th</sup> Day of June 2006.**

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**Sharon K. Yoho  
State Hearing Officer**