



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

May 24, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 23, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Aged/Disabled (HCB) Title XIX 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 for the Aged/Disabled Waiver 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 Section 570]

Information submitted at your hearing revealed that you meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
[REDACTED] County Senior Center

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

\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 06-BOR-1065**

**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 24, 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 23, 2006 on a timely appeal filed February 3, 2006. The hearing was originally scheduled for March 30, 2006, but was rescheduled at the request of the Claimant.

**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

\_\_\_\_\_, Claimant's nephew

\_\_\_\_\_, Case Manager, \_\_\_\_\_ County Senior Center

\_\_\_\_\_, RN, \_\_\_\_\_ County Senior Center

\_\_\_\_\_, care provider, \_\_\_\_\_ County Senior Center

Brian Holstein, Licensed Social Worker, BoSS (participating telephonically)

\_\_\_\_\_, RN, WVMi (participating telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 is correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program.

### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Section 570

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 570
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on December 19, 2005
- D-3 Notice of Potential Denial dated December 28, 2005 with additional information
- D-4 Notice of Denial dated January 31, 2006

#### **Claimant's Exhibits:**

- C-1 WVMi denial packet
- C-2 WVMi authorization for incontinent products

### **VII. FINDINGS OF FACT:**

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing a reevaluation to determine continued medical eligibility.
- 2) West Virginia Medical Institute completed a medical assessment (D-2) on December 19, 2005 and determined that the Claimant is not medically eligible to participate in the ADW Program.

- 3) The Claimant was notified of the potential denial (D-3) on December 28, 2005 and advised that she had two weeks to submit additional medical information. Additional information was submitted, however, it did not change the PAS findings.
- 4) On January 31, 2006, a denial notice (D-4) was sent to the Claimant.
- 5) Ms. [REDACTED] reviewed the PAS 2005 (D-2) and testified that three (3) deficits were established for the Claimant in the areas of physical assistance with bathing, dressing and grooming.
- 6) The Claimant's witnesses contended that additional deficits should be awarded in the following areas:

**Incontinence-** Ms. [REDACTED] testified that the Claimant has been approved by WVMI to receive 100 incontinent products per month through West Virginia Medicaid (C-2). Ms. [REDACTED] pointed out that Ms. [REDACTED] documented the Claimant's bouts of diarrhea, and she also stated that the Claimant has had several colonoscopies and bowel surgeries. Ms. [REDACTED] testified that, during the bouts of diarrhea, the Claimant is totally incontinent. Mr. [REDACTED], who resides with the Claimant, testified that the Claimant has no control of her bowels on some days and is also incontinent of urine. Ms. [REDACTED] testified that the Claimant does not make it to the bathroom nine out of 10 times as a result of either bladder or bowel incontinence and that, as a result, she constantly washes the Claimant's soiled clothing. Ms. [REDACTED] testified that the Claimant reported during the assessment that she could make it to the bathroom at times, but did have accidents with her bladder and bowels. Therefore, the Claimant was rated as having less than total incontinence.

*Although testimony is credible that the Claimant has frequent bouts of incontinence, no additional deficit is awarded in this area since testimony does not reveal that the Claimant is incontinent of bowel or bladder at all times.*

**Transferring-** Ms. [REDACTED] testified that the Claimant cannot get in or out of her bathtub unassisted and must receive physical assistance at all times in this activity. Ms. [REDACTED] testified that she helps the Claimant get showers and also puts her in the bathtub.

In a letter to WVMI dated January 9, 2006 (C-1), Ms. [REDACTED] stated that the Claimant has a history of falls and that there are times when the Claimant requires one-person assistance with transferring and walking

Ms. [REDACTED] testified that the Claimant was able to get off of the couch using her walker on the date of the assessment.

*Testimony is credible that the Claimant requires physical assistance with transferring at times and one (1) additional deficit is awarded in this area.*

**Walking-** Ms. [REDACTED] testified that the Claimant suffers from Chronic Obstructive Pulmonary Disease (COPD) and is very unsteady on her feet, often requiring hands-on

assistance with ambulating. The Claimant underwent surgery to remove a lung tumor on October 27, 2005. Mr. [REDACTED] testified that if something happened on one side of the house, the Claimant would be unable to walk to the other side of the house because it is too great of a distance for her. Ms. [REDACTED] reported that the Claimant bounces off the wall if she attempts to walk down the hallway by herself. She testified that she holds onto the Claimant when she is unsteady.

Ms. [REDACTED] testified that the Claimant was able to walk unassisted on the date of the assessment and information on the PAS indicates that the Claimant walked five to seven steps unassisted on that date. At the time, the Claimant was not wearing oxygen. Ms. [REDACTED] questioned whether witnessing the Claimant take a few steps is a true assessment of the Claimant's ability to ambulate.

*One (1) additional deficit is awarded for physical assistance with walking since credible testimony was provided by the Claimant's witnesses to support this finding.*

***Inability to vacate the building in the event of an emergency-*** Ms. [REDACTED] testified that the Claimant could not vacate her residence unassisted in the event of an emergency due to her limited mobility and use of oxygen. In Ms. [REDACTED]'s January 9, 2006 letter to WVMi (C-1), she stated that there is a danger that the Claimant would be unable to exit her home safely in the event of a fire due to attached oxygen equipment, exacerbation of her COPD due to smoke inhalation, and/or inability to reach oxygen equipment.

*Based on the Claimant's oxygen needs and need for physical assistance at times with walking (Level III) and transferring (Level III), it is reasonable to believe that she would require physical assistance to vacate her residence in the event of an emergency. Therefore, one (1) deficit is awarded for inability to vacate.*

- 7) 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.

- 8) 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.

9) 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) Policy clearly specifies that an individual must be awarded five (5) deficits on the PAS 2005 in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received three (3) deficits on the PAS completed by Ms. [REDACTED] in conjunction with her annual medical reevaluation.

- 3) As a result of testimony presented during the hearing, three (3) additional deficits are awarded to the Claimant in the areas of one-person assistance with transferring, one-person assistance with walking, and inability to vacate in the event of an emergency.
- 4) The addition of three (3) deficits brings the Claimant's total number of deficits to six (6). Therefore, the Claimant continues to meet medical eligibility requirements for the Aged/Disabled Waiver Program.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's 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 24th day of May, 2006.**

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**Pamela L. Hinzman  
State Hearing Officer**