



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

August 31, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 29, 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 March 1, 2006 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], CWVAS - Boggess, BoSS - [REDACTED], WVM

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

_____,
Claimant,

Action Number: 06-BOR-1633

**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 August 29, 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 August 29, 2006 on a timely appeal, filed April 14, 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
_____, claimant's case manager, CWVAS

Department's Witnesses:

Brian Holstein, Bureau of Senior Services by phone
[REDACTED] WVMI nurse by phone

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

All participants appeared by speakerphone.

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 March 1, 2006
- D-3** Eligibility Determination dated March 1, 2006
- D-4** Notice of potential denial dated March 13, 2006
- D-5** Notice of termination dated March 28, 2006

VII. FINDINGS OF FACT:

- 1) Ms. _____ is 66-year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on March 1, 2006.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with only the claimant present. The evaluating nurse determined that the claimant had only three (3) qualifying deficits. She assigned a deficit for Ms. _____'s need for physical assistance in bathing, grooming and eating.

- 3) Ms. _____ has primary diagnosis of Severe Chronic Obstructive Pulmonary Disease, Tobacco Abuse, Coronary Artery Disease and High Blood Pressure.
- 4) Issues addressed by the claimant's witnesses were in the areas of dressing, orientation and vacating.
- 5) The claimant reported to the nurse during the PAS that she was able to put her own pants on. The nurse's notes on the PAS indicate that the claimant denied needing help with dressing. The claimant testified at the hearing that she can put her pants on, but needs someone to help her with her shoes, bra, and for buttoning shirts. She did not tell the nurse during the evaluation that she could do these items of dressing by herself. Ms. _____ agreed that Ms. _____ needs help with shoes, bra, and buttoning. She also stated that Ms. _____ cannot put her own socks on either.
- 6) Ms. _____ voiced her concerns regarding Ms. _____'s orientation. The claimant is depressed a lot of the time which causes her to be disoriented. She doesn't remember why the case manager has come to visit her and she does not remember the WVMi nurse being at her home for the evaluation. Ms. _____ commented about her disorientation. She said, "I know I'm half crazy. I can't remember things like I should. I sometimes don't know what day it is. Months go by." The evaluating nurse had rated Ms. _____ at a level II for orientation, which indicates she is intermittently disoriented.
- 7) Ms. _____ believes a deficit should have been assessed for vacating due to Ms. _____'s disorientation. At the conclusion of the hearing, Ms. _____ became upset and stated, "A person must have to be near dead to get any help."
- 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.
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- 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) 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 WVMH nurse assigned the claimant only three (3) qualifying deficits in the areas of bathing, grooming and eating.
- 2) The issues raised at the hearing were in the areas of dressing, orientation and vacating. Evidence and testimony concludes that Ms. _____ does need hands on assistance for dressing. It could not be concluded that Ms. _____ is at a level III for orientation which policy stipulates to be totally disoriented or comatose. Ms. _____ obviously has memory problems and does have some episodes of disorientation, but her testimony during the hearing clearly shows that she is not totally disoriented.
- 3) The claimant was not assessed a deficit for vacating because, for vacating, policy requires the client to be physically unable at all times in walking or to be a level III in orientation. The claimant was correctly assessed at a level II for orientation and therefore; a deficit for vacating could not be assessed.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse should have assessed the claimant with four (4) qualifying deficits at the PAS. Four deficits would not change the ultimate decision to deny. 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 31st Day of August 2006.

**Sharon K. Yoho
State Hearing Officer**