



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street West  
Charleston, WV 25313**

**Joe Manchin III  
Governor**

**Martha Yeager Walker  
Secretary**

September 13, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 25, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your Aged and Disabled Waiver application.

In arriving at a decision, the State Hearings 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 and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows: Applicants for the ADW 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 \_\_\_\_\_ 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 ADW Program as an alternative to NF care. Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT).

The information submitted at your hearing revealed: You do not meet the medical eligibility criteria for continued Waiver Services.

It is the decision of the State Hearings Officer to UPHOLD the ACTION of the Department to deny the Aged and Disabled Waiver application.

Sincerely,

Ray B. Woods, Jr., M.L.S.  
State Hearing Officer  
Member, State Board of Review

cc: Board of Review  
Kay Ikerd, RN – BoSS  
[REDACTED], RN – WVM  
[REDACTED], Case Manager - CWVAS

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 06-BOR-1722**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 13, 2006 for Ms. \_\_\_\_\_. 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 scheduled for August 25, 2006 on a timely appeal filed April 18, 2006.

It should be noted here that Ms. \_\_\_\_\_ was receiving benefits at the time of the hearing. A pre-hearing conference was not held between the parties, and Ms. \_\_\_\_\_ did not have legal representation.

**II. PROGRAM PURPOSE:**

The Program entitled Aged and Disabled Waiver Services 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

\_\_\_\_\_, Khosa, Case Manager – Central West Virginia Aging Services, Inc. (CWVAS)

\_\_\_\_\_, RN – \_\_\_\_\_ Community Organization (BCCO)

\_\_\_\_\_, Homemaker - \_\_\_\_\_ Community Organization (BCCO)

Kay Ikerd, RN – Bureau of Senior Services (BoSS)\*

\_\_\_\_\_, RN – West Virginia Medical Institute (WVMI)\*

\*Participated by conference call

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

### IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Does Ms. \_\_\_\_\_ meet the continued medical eligibility criteria for the Aged and Disabled Waiver Services Program?

### V. APPLICABLE POLICY:

WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*

### VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

#### Department's Exhibits:

- D-1 WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*
- D-2 PAS dated 03/09/06
- D-3 Termination/Denial Letter dated 04/14/06
- D-4 Potential Denial Letter dated 03/30/06
- D-5 Request for Hearing received by Bureau for Medical Services on 04/18/06
- D-6 Miscellaneous Hearing Documents

#### Claimants' Exhibits:

None

### VII. FINDINGS OF FACT:

1) This issue involves the denial of services under the Aged and Disabled Waiver Services Program. The assessment was completed on March 9, 2006 for Ms. \_\_\_\_\_. The primary diagnoses were listed as Carotid Disease; Osteoarthritis; Venous Insufficiency; Poor Vision; and Hard of Hearing. Those present during the assessment were Ms. \_\_\_\_\_; \_\_\_\_\_ and \_\_\_\_\_, Son and Daughter-in-Law; and Ms. \_\_\_\_\_, RN of the West Virginia Medical Institute (Exhibit D-2).

Ms. [REDACTED] determined through her evaluation that Ms. [REDACTED] only had three of the five required deficits for Waiver Services. The deficits were in the areas of: Bathing; Grooming and Dressing. It should be noted that the evaluation was based only on Ms. [REDACTED]'s functional levels on the day of the visit.

2) The West Virginia Medical Institute issued a Potential Denial Letter to Ms. [REDACTED] on March 30, 2006 (Exhibit D-4). According to the letter, Ms. [REDACTED] had deficiencies in 3 areas: Dressing; Grooming and Dressing. Ms. [REDACTED] was given two weeks to provide any additional medical documentation for reconsideration.

3) Ms. [REDACTED] did not submit additional information and WVMI issued a Termination/Denial Letter on April 14, 2006 (Exhibit D-3).

4) Ms. [REDACTED] requested a fair hearing, and it was received by the Bureau for Medical Services on April 18, 2006 (Exhibit D-5).

5) At the hearing, Ms. Kay Ikerd, RN reviewed the ADW Policy (Exhibit D-1). A new policy went into effect November 1, 2005 that addressed how certain areas of the PAS would be evaluated. There were no questions for Ms. Ikerd.

6) At the hearing, Ms. [REDACTED], RN reviewed the PAS assessed on March 9, 2006 (Exhibit D-2).

7) The areas of disagreement were in the area of Eating; Bladder Incontinence; Transferring; Walking; and Vacating.

Eating – Food is cut up by the homemaker including peeling apples. She is unable to peel apples due to arthritis. This is credible testimony and one point will be awarded in this area.

Bladder Incontinence – Ms. [REDACTED] wears pads at all times. According to Ms. [REDACTED] testimony and Nurses Notes, Ms. [REDACTED] reported that she takes a water pill and is occasionally incontinent of bladder but not very often. Family members present during the assessment did not disagree with Ms. [REDACTED] assessment. A deficit will not be awarded in this area

Vacating – Ms. [REDACTED] testified that Ms. [REDACTED] has Trans Ischemic Attacks (TIA's) that could affect her ability to vacate the building. There is no diagnosis of Ms. [REDACTED] having a related condition that would affect Ms. her cognitive abilities. According to the policy, 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. A deficit will not be awarded in this area.

Transferring and Walking– Testimony revealed that the Homemaker assists Ms. [REDACTED] with transferring and walking. Ms. [REDACTED] also she uses a lift chair at home. Ms. [REDACTED] Nurses Notes state in part,

Client has a lift chair and says that occasionally she has to bring it up to a sitting position so she can get up. Observed the client get up from a sitting position and walk across the room independently, while she was looking for her nebulizer treatment machine.

A deficit will not be awarded in this area. Although Ms. \_\_\_\_\_'s medical condition \_\_\_\_\_ have changed since the assessment over five month's ago, there was no additional documentation to support one person assistance with Walking and Transferring.

**8) Aged/Disabled Home and Community Based Services Manual § 570 PROGRAM  
ELIGIBILITY FOR CLIENT:**

Applicants for the ADW 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 \_\_\_\_\_ 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 ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

**10) 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 ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term service 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 § 570.1.b. -  
Medical Criteria:**

An individual must have five deficits on the PAS 2005 to qualify medically for the ADW 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 persons 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 (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations. (Item 26 on the PAS 2005)
- E. 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 some one other than the recipient at all times.

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

1) The Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria states in part, "An individual must have five deficits on the PAS to qualify medically for the ADW Program."

2) The policy for Bladder Incontinence; Vacating a Building; Transferring and Walking states in part:

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)

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

Transferring must be a Level 3 or higher (one person or two persons assist in the home);

Walking must be a Level 3 or higher (one person assist in the home);

3) The testimony and medical documentation does not support additional deficits in the areas of Bladder Incontinence; Vacating a Building; Walking, and Transferring.

4) Ms. \_\_\_\_\_ does receive a deficit for Eating, but the four deficits are not enough to qualify for continued benefits under the ADW program.

**IX. DECISION:**

It is the decision of this State Hearing Officer to UPHOLD the ACTION of the Department in this particular matter.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 13th Day of September, 2006.**

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**Ray B. Woods, Jr., M.L.S.**  
**State Hearing Officer**