



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

May 22, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 3, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) 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 Home and Community Based Services Waiver (ADW) Program is based on current policy and regulations. Some of these regulations state as follows: An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of assessment elements on the PAS. (Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003)

The information which was submitted at your hearing revealed that you do not meet the medical criteria for the ADW Program.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Libby Boggess, BoSS
[REDACTED], WVMI
[REDACTED], All Care Home & Community Services, Inc.

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

_____,
Claimant,

Action Number: 05-BOR-6888

**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 3, 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 3, 2006 on a timely appeal, filed November 2, 2005. It should be noted that this hearing was originally scheduled for March 8, 2006. The hearing was rescheduled to May 3, 2006 at the request of the claimant.

It should be noted here that the claimant's benefits have been continued pending the hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

_____, Claimant
_____, CM, All Care Home & Community Services, Inc.
_____, Claimant's Daughter and Homemaker
_____, Claimant's Grandson
Brian Holstine, LSW, BoSS (By Telephone)
_____, RN, WVMi (By Telephone)

Presiding at the hearing was Margaret M. Mann, 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 Claimant continues to meet the medical requirements needed to receive ADW services.

V. APPLICABLE POLICY:

Sections 570, 570.1, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Sections 570, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003
- D-2 PAS-2000 dated 10/05/2005
- D-3 Potential Denial Letter dated 10/11/2005
- D-4 Denial Letter dated 10/27/2005
- D-5 Statement from _____ dated 10/31/2005 received by WVMi 11/02/2005

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of ADW services.
- 2) A medical assessment was completed on 10/05/2005. The claimant, his daughter, _____, and two grandsons were present. Two deficits were found. The deficits found were physically unable to vacate in the event of an emergency and physical assistance with dressing. (D-2)
- 3) The claimant was notified of potential denial in a letter dated 10/11/2005. (D-3) A final denial letter was issued 10/27/2005. (D-4) The claimant requested a hearing on this issue.

- 4) The claimant disagreed with the findings for bathing, grooming, bladder/bowel incontinence, transferring and medication administration.
- 5) Testimony from [REDACTED] revealed that the claimant reported during the assessment he uses soap to wash his hair. He does this when he is taking a shower. He usually keeps his hair short in order not to have to comb his hair. He notes he takes care of his dentures and when he gets sick his grandson will help with his dentures at that time. The claimant has an electric razor and shaves himself. At times he will let his facial hair grow until he gets feeling better. Usually can take care of shaving on his own. His daughter noted he cuts his toenails and fingernails himself. The only thing he makes her do is clip the hairs from his ears. [REDACTED] asked the claimant how often he is incontinent in one week's time. The claimant noted that when it comes to bladder and bowel, he does have accidents on himself. He stated he may go two weeks and not have an accident and sometimes he may go one week and have an accident. He noted when it comes to his bowels, he may have an accident on his self two or three times per year. The claimant was assessed as being able to administer his medication with prompting/supervision. While she was in the home for the assessment, she observed the claimant's daughter did give the claimant his insulin medication, he was able to draw up his own insulin and administer that himself. She did not ask how often the grandson helped with the dentures.
- 6) Mr. _____ testified he administers his own insulin when he is able. When he does not feel well, he lets his daughter administer the insulin. When he was discussing continence with the nurse, he was speaking of during the daytime.
- 7) Ms. _____ testified that her father gets shaky a lot and she has to administer the insulin. Sometimes she draws one up and puts it in the refrigerator for him to administer later. She puts the medicine in the nebulizer for her father because he is so shaky. Sometimes he gets so shaky, he cannot hold the razor. Her father does not feel comfortable her being with him when taking a bath. At the time of the assessment, he was needing assistance getting up from the couch. She has to wash her father's bedcovers and underwear because of his incontinence. She stated sometimes this happens two to three times a week.
- 8) Mr. _____ testified that he helps his grandfather every now and then with his bathing. He has a hard time getting in and out of the bathtub and getting a wash rag on his shoulders.
- 9) Ms. [REDACTED] testified that the claimant reported when he transfers he uses the side of the chair to help him to stand, if he does stagger, he would stand still until the dizziness subsided. If he goes long distances, he would use his cane for that. He has to hold on to the furniture to get around the home. He does not use a wheelchair in the home.
- 10) The PAS-2000 reveals that the claimant is able to take his medication with prompting/supervision. He was evaluated as self/prompting for bathing and grooming, has occasional incontinence for bladder/bowel and needing supervision/assistive device for transferring and walking. The PAS reads in part that he will take care of his dentures and when he gets sick his grandson will help him with this. (D-2)

- 11) Section 570 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

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.
- 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.

- 12) Section 570.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

- 13) Section 570.1.a of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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 level of care (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.

- 14) Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

An individual must have five deficits on the PAS to qualify medically for the ADW 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 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. #27: 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.

E. #28: Individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) An individual must have five deficits on the PAS-2000 to qualify medically for the ADW Program. These deficits are determined from a combination of elements on the PAS-2000.
- 2) Two deficits were established at the time of the PAS review on 10/05/05. Those were physically unable to vacate in the event of an emergency and needs physical assistance with dressing.
- 3) An additional point will be added for bathing. Credible testimony from the claimant's grandson demonstrates the claimant needs assistance getting in and out of the bathtub and he helps him wash his shoulders.
- 4) An additional point will be added for grooming. Credible testimony from the claimant's witnesses demonstrates that the claimant needs help at times with certain aspects of grooming.
- 5) Testimony received from and on behalf of the claimant does not clearly demonstrate any other changes to the conclusions reached by the Department on the PAS-2000 10/05/05. There was no clear testimony that the claimant has incontinence of the bladder/ bowel at least three times per week which is the standard used by WVMJ to determine incontinence. The daughter testified this sometimes happens two or three times a week. The claimant generally administers his own medication with supervision. The claimant transfers/walks around the house by holding on to the furniture and for long distances, he uses a cane.
- 6) There are a total of four deficits.
- 7) An individual must have five deficits on the PAS-2000 to qualify medically for the ADW Program.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does not meet the medical criteria for the ADW Program. The Department is upheld in the decision to terminate the claimant's benefits under the Aged/Disabled Home and Community-Based Services Waiver (ADW) Program. The action described in the notification letter dated October 27, 2005 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of May, 2006.

Margaret M. Mann
State Hearing Officer