



**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

May 4, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 31, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Aged and Disabled Waiver case.

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 may 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 continued medical eligibility criteria for Waiver Services.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to close your Aged and Disabled Waiver case.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Libby Boggess, RN – BoSS
[REDACTED], Case Manager – Allied Nursing and Community Services

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

_____,
Claimant,

v.

Action Number: 06-BOR-867

**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 May 4, 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 March 31, 2006 on a timely appeal filed January 17, 2006.

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

_____, Daughter

_____, RN – Loved Ones in Home Care

_____, Case Manager – Allied Nursing and Community Services

Libby Boggess, RN – Bureau of Senior Services (BoSS)*

Cathie Zuspan, RN – Bureau of Senior Services (BoSS) (Observing)*

_____, 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 12/16/05

D-3 Termination/Denial Letter dated 01/10/06

D-4 Potential Denial Letter dated 12/22/05

D-5 Hearing Request received by B. M. S. on 01/17/06

D-6 Miscellaneous Hearing Documents

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1) This issue involves the denial of continued services under the Aged and Disabled Waiver Services Program. The re-evaluation assessment was completed on December 16, 2005, (Exhibit D-2), for Ms. _____. Ms. _____'s Primary Diagnoses were: Hypertension, Depression and, Acute CVA. Those present during the assessment were Ms. _____; Ms. _____, Case Manager; and Ms. _____, RN of the West Virginia Medical

Institute. The Homemaker arrived later in the interview. Ms. [REDACTED] determined that Ms. [REDACTED] had four (4) of the required five (5) deficiencies for continued services. The deficiencies were: Eating; Bathing; Grooming; and Dressing. It should be noted that the determination was based solely on a single days visit.

- 2) The West Virginia Medical Institute sent a letter of Potential Denial (D-4), to Ms. [REDACTED] on December 22, 2005. The letter stated there were four (4) deficits on the PAS. Ms. [REDACTED] was permitted to submit additional documentation within two weeks of the letter, to the West Virginia Medical Institute (WVMI). No additional medical documentation was received.
- 3) WVMI issued a Termination/Denial Letter to Ms. [REDACTED] on January 10, 2006 (D-3). The letter stated in part, "Your PAS only indicated deficiencies in 4 areas."
- 4) Ms. [REDACTED] completed a Request for Hearing (D-5), which was received by the Bureau for Medical Services on January 17, 2006.
- 5) At the hearing, Ms. Libby Boggess, RN of the Bureau of Senior Services explained the Aged and Disabled Waiver Policy (D-1). There were no questions for Ms. Boggess.
- 6) Ms. [REDACTED], RN reviewed the PAS dated December 16, 2005. There were no questions for Ms. [REDACTED].
- 7) Ms. [REDACTED], RN and Ms. [REDACTED] raised concerns about Medicine Administration and Transferring. Ms. [REDACTED] disagreed with the policy on Medicine Administration. Although the individual can take a pill and place it in their mouth, it does not mean that you can safely administer your own medication. According to Ms. [REDACTED], the family locks up Ms. [REDACTED]'s medicines because she has over medicated on occasion. She is confused and cannot distinguish between the necessary medicines. Ms. Boggess referred to the policy on medicine administration that states,

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.

The remaining issue was Transferring. According to Ms. [REDACTED] testimony, Ms. [REDACTED] walks with the assistance of a cane and falls a lot in the home. On occasion she needs the assistance of someone. Ms. [REDACTED] referred to her Nurse's Overall Comments regarding her reason for marking Walking and Transferring as Level 2 – Supervised Assistive Device, on the PAS dated December 16, 2005. It states in part,

When it comes to transferring from her bed she notes she would scoot to the edge of the bed and grab her cane. Homemaker notes she has had a lot of falls recently and states if she does not have her cane with her than (sic) this is when she usually will fall. Homemaker notes she has fallen in the shower also. When it comes to walking client notes she does use a cane to help her walk. Homemaker notes she has ask (sic) for a walker and she cannot use a walker due to weakness on her right side. Client notes she also holds onto the furniture while she is walking.

8) Ms. _____ expressed concern about her mother's Incontinence. Ms. Boggess referred to the policy that the individual must be totally incontinent to receive a deficit.

9) The testimony and documentation does not support additional deficits for Walking, Transferring, and Continence.

10) 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 may 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.

11) 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.

12) 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:

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."

The testimony and medical documentation indicates Ms. _____ does not qualify for additional deficits for Walking, Transferring, and Incontinence under the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department. Ms. _____ does not meet the continued medical eligibility for program services.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of May, 2006.

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