



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

December 6, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 27, 2007. Your hearing request was based on the Department of Health and Human Resources' proposed termination of services under the Aged Disabled 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 ADW 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 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the July 23, 2007 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the action of the Department to terminate 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  
Kay Ikerd, BoSS  
[REDACTED], WVM I

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

  
**Claimant,**

**v.**


**Action Number: 07-BOR-2001**

**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 November 27, 2007 for  on a timely appeal filed August 23, 2007. 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.

**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:

[REDACTED] claimant

[REDACTED], claimant's homemaker, [REDACTED]

[REDACTED], homemaker RN, [REDACTED]

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone

[REDACTED], WVMI nurse, by speakerphone

Presiding at the Hearing was Sharon K. Yoho, 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 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 §500**

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

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

D-1 Aged/Disabled Home and Community based Services Manual §503 thru 503.4

D-2 Pre-Admission Screening, PAS, completed July 23, 2007

D-3 Eligibility Determination dated July 23, 2007

D-4 Notice of potential denial dated August 1, 2007

D-5 Notice of denial dated August 17, 2007

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

C-1 Memo from Homemaker regarding dressing dated August 15, 2007

C-2 Letter from Dr. regarding dressing dated August 20, 2007

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

- 1) This claimant is a 64-year-old female whose Aged Disabled waiver case was undergoing a re-evaluation in July 2007.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on July 23, 2007 with the claimant. The claimant's homemaker was present. The nurse determined from the answers given to her by the claimant that only four qualifying deficits could be awarded. Those qualifying deficits were in the areas of eating, bathing, grooming and incontinence.

- 3) The only issue introduced by the claimant and her witnesses was in the area of dressing. The claimant advised the nurse at the assessment that she had dressed herself that morning without any assistance. She told the nurse that she leaves top buttons unbuttoned so she can get them over her head. The claimant told the nurse that she leaves her blouses buttoned so she does not have to button them. The evaluating nurse made a determination to not give a deficit for dressing since the claimant dressed herself on that morning.
- 4) The claimant's homemaker RN testified that due to crippling arthritis in both hands, the claimant is not able to button her blouses. Others have to button her clothing and leave the top buttons unbuttoned. The claimant stated that she will sometimes have as many as the top 3 left unbuttoned and will have to hold clothing closed if someone comes to the door. She also reports that others have to zip clothing that has a zipper. She states that she is right handed and that her right hand is more crippled than her left is.
- 5) The claimant's homemaker testified that she was around on the day of the assessment, but the nurse did not direct questions to her. She reports that she has to help the claimant dress. Along with buttons, she says that she has to help pull up depends and pants.
- 6) The claimant's case management agency provided evidence to the Department on August 27, 2007 to support her need for physical assistance in dressing. Since this information was received twelve days beyond the two weeks permitted on the Potential Denial letter (Exhibit D-4) it appears that the Department did not consider it. These documents were entered as evidence. One of these documents was from the homemaker who clarifies that she does have to help the claimant with dressing. The other document is from the claimant's doctor who reports that due to her arthritis, she cannot fasten buttons and requires help with dressing.
- 7) The Department contends that the claimant can give herself insulin injections and therefore should be able to do buttons. The claimant testified as to how she does her own injections. She lays the needle down on her leg and uses her left hand to pull the plunger. The Department views this as a fine motor skill and that it should relate to her ability to button buttons.
- 8) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

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.

- 9) Aged Disabled Home and Community-Based Services Manual Section 503.1: MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the ADW Program.

**10) Aged Disabled Home and Community-Based Services Manual Section 503.1.1  
PURPOSE:**

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW 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.

**11) Aged Disabled Home and Community-Based Services Manual Section 503.2  
MEDICAL CRITERIA:**

An individual must have five deficits on the Pre-Admission Screening Form (PAS), to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

#24 Decubitus; Stage 3 or 4

#25 In the event of an emergency, the individual is c) mentally unable to vacate or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits.

#26 Functional abilities of individual in the home. (Item 25 on the PAS 2005).

- |                            |   |
|----------------------------|---|
| a. Eating-----             | Level 2 or higher (physical assistance to get nourishment, not preparation)   |
| b. Bathing ----            | Level 2 or higher (physical assistance or more)   |
| c. Grooming---             | Level 2 or higher (physical assistance or more)   |
| d. Dressing ----           | Level 2 or higher (physical assistance or more)   |
| e. Continence--<br>bowel   | Level 3 or higher; must be incontinent  |
| f. Continence--<br>bladder | Level 3 or higher; must be incontinent  |
| g. Orientation--           | Level 3 or higher (totally disoriented, comatose)   |
| h. Transfer-----           | Level 3 or higher (one person or two person assist in the home)   |
| i. Walking-----            | Level 3 or higher (one person assist in the home)   |
| j. 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) |

#27 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.

#28 The individual is not capable of administering his/her own medications.

**12) Aged Disabled Home and Community-Based Services Manual Section 503.4**

**MEDICAL REEVALUATION:**

Annual reevaluations for medical necessity for each ADW member must be conducted.

**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 WVMi nurse, determine that the claimant had only four qualifying deficits in the areas of bathing, eating, grooming and incontinence.
- 2) Evidence and testimony provided for this hearing did support that a deficit should have been assessed in the area of dressing at the time of the PAS. The claimant does need hands on assistance with items of clothing when they require buttoning and this fact was presented to the evaluating nurse at the assessment. This fact was also reiterated with documents provide to the Department three months prior to this hearing date. The claimant's ability to accomplish insulin injections using fine motor skills, does not conclude that she is able to do all fine motor skills related to dressing.
- 3) The Department was incorrect in their assessment of four qualifying deficits at the time of the PAS. Five deficits should have been awarded.

**IX. DECISION:**

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was incorrect in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **reverse** the Department's action to terminate this claimant's services under the Aged Disabled Title XIX (HCB) Waiver program. I further rule that along with assigning an additional deficit for dressing that the associated level of care points also be assessed in the area of dressing.

**IX. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 6<sup>th</sup> Day of December 2007.**

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**Sharon K. Yoho  
State Hearing Officer**