



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 2590  
Fairmont, WV 26555

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 18, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 4, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through the Aged & Disabled (HCB) Title XIX Waiver Services 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 Waiver 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 a 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 Section 503]

The information submitted at your hearing reveals that your medical condition does not require a sufficient number of services and the degree of care required to qualify you medically for participation in the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for benefits and services under the Aged & Disabled Waiver Program.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 08-BOR-1549**

**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 September 18, 2008 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 September 4, 2008 on a timely appeal filed June 9, 2008.

**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  
Kay Ikerd, RN, BoSS  
Melody Lehosit, RN, WVMI

All parties participated telephonically.

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its decision to deny the Claimant's application for benefits and services under the Aged/Disabled Home and Community-Based Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 503, 503.1, 503.1.1 and 503.2

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 503
- D-2 Pre-Admission Screening (PAS) assessment completed on April 27, 2008
- D-3 Notice of Potential Denial dated May 12, 2008
- D-4 Notice of Denial dated May 28, 2008

**Claimant's Exhibits:**

- C-1 Correspondence from [REDACTED] MD., dated May 22, 2008

**VII. FINDINGS OF FACT:**

- 1) On April 27, 2008, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on April 27, 2008}.

- 2) On or about May 12, 2008, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2.

Based on your PAS you have deficiencies in only 2 areas –Vacating a Building and Continence.

This notice goes on to state – “If you believe you have additional information regarding your medical conditions that wasn’t considered, please submit those records to WVMi *within the next 2 weeks*. Any additional information submitted within this timeframe will be considered before a final determination is made.”

The Department noted that no additional information was received.

- 3) The Claimant was notified that her application for ADW Program eligibility was denied in a termination/denial notice dated June 29, 2007 (Exhibit D-4). This notice states, in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 3 areas –Bathing, Grooming and Continence.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) The Claimant contends that her physician drafted correspondence on her behalf dated May 22, 2008 and this document was faxed to BoSS or WVMi by Family Services. Accordingly, the Claimant contends that she should have been awarded additional deficits in bathing, dressing and wheeling. The record remained open for a period of ten (10) days and Claimant’s Exhibit (C-1) was received on September 8, 2008.

- 5) The Department was agreeable to the entry of Claimant's Exhibit C-1, however, the Department noted that the physician's statement fails to address functional limitations and/or explain why the Claimant would require physical assistance in the areas contested. The findings listed below are based on the evidence submitted in the contested functional areas.

**Wheeling** - The Department noted that the Claimant was not using a wheelchair in the home at the time of the assessment (confirmed in D-2) and policy stipulates that an individual cannot receive a deficit in "wheeling" unless "walking" is rated a level 3 or 4 (one person assist or more). Based on the evidence, the Claimant does not qualify for a deficit in wheeling.

**Bathing** – The Claimant purported that she has difficulty transferring in-and-out of the bathtub but can bathe herself once in the tub. The WVMI RN testified that transferring was not identified as a deficit in the assessment because the Claimant (See Exhibit D-2, page 6 of 7) demonstrated the ability to transfer with and without the use of her walker and she would sometimes steady herself by holding on to the wall or a chair. This evidence supports a finding that the Claimant requires no more than an assistive device (not physical assistance) when transferring and that she could, at the time of the assessment, transfer in-and-out of the bathtub. Based on the testimony received at the hearing as well as the documentation found on the assessment, the Department is correct in determining the Claimant is not demonstrating a deficit in bathing.

**Dressing** – The Claimant reported during the assessment that she sometimes requires assistance with putting on pantyhose when she goes to church, but that she is otherwise able to dress herself. The Claimant demonstrated the movements required to put on pantyhose and was able to reach her feet and toes during the assessment. While the Claimant may occasionally have difficulty putting on her pantyhose, there would be other areas of dressing adversely affected if dressing was a functional deficit. There is insufficient evidence to support a finding that the Claimant requires Level-2 (physical assistance) with dressing. A deficit cannot be awarded in the area of dressing.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 503 (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.

- 7) 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 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.

8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2 (D-1): An individual must have five (5) deficits on the Pre Admission Screening (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 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  
Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)  
Bathing ----- Level 2 or higher (physical assistance or more)  
Dressing ---- Level 2 or higher (physical assistance or more)  
Grooming--- Level 2 or higher (physical assistance or more)  
Continence (bowel, bladder) -- Level 3 or higher; must be incontinent  
Orientation-- Level 3 or higher (totally disoriented, comatose)  
Transfer----- Level 3 or higher (one-person or two-person assistance in the home)  
Walking----- Level 3 or higher (one-person assistance 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)

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

### VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that two (2) deficits were identified on the PAS completed by WVMi in April 2007 in conjunction with the Claimant's application for Aged/Disabled Waiver Program eligibility.
- 3) The evidence submitted at the hearing fails to identify any additional functional deficits.

- 4) Whereas the Claimant demonstrates only two (2) qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the action of the Agency in denying the Claimant's application for benefits and services under the Aged/Disabled, Title XIX (HCB), Waiver Services Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 18<sup>th</sup> Day of September, 2008.**

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**Thomas E. Arnett**  
**State Hearing Officer**