



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

November 17, 2008

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

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 29, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under 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 501]

Information submitted at your hearing reveals that you do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
Select In-Home Services

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

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

v.

**Action Number: 08-BOR-1850**

**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 17, 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 October 29, 2008 on a timely appeal filed July 28, 2008 and received by the Hearing Officer on August 18, 2008. The hearing was originally scheduled for October 2, 2008, but was rescheduled at the request of the Department.

**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  
\_\_\_\_\_, daughter of Claimant  
\_\_\_\_\_, Homemaker, Select In-Home Services  
\_\_\_\_\_, RN, Select In-Home Services

**Telephonic participants:**

Kay Ikerd, RN, Bureau of Senior Services  
Melody Lehosit, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, 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 Agency was correct in its proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 501, 501.3.1.1 and 501.3.2

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

**Department's Exhibits:**

- D-1 Pre-Admission Screening (PAS) completed on June 18, 2008
- D-2 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-3 Denial notice dated July 10, 2008
- D-4 Medical Necessity Evaluation Request
- D-5 Notice of Potential Denial dated June 23, 2008

**Claimant's Exhibits:**

- C-1 RN Assessment dated June 18, 2008

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical reevaluation to determine if she continues to meet medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on June 18, 2008 (D-1) and determined that the Claimant does

not meet medical eligibility criteria for the program. The nurse identified two (2) qualifying deficits for the Claimant in the areas of physical assistance with bathing and grooming.

- 3) The Claimant was sent a Notice of Potential Denial on June 23, 2008 (D-5) and was advised that she had two weeks to submit additional medical information for consideration.
- 4) The Claimant was sent a final denial notice on July 10, 2008 (D-3).
- 5) The Claimant and her homemaker testified that she often has “bad days” and stays in bed for much of the time. The homemaker testified that she sometimes assists the Claimant with dressing and drying off after bathing. The Claimant’s daughter testified that she visits her mother often and her mother is often in bed due to fibromyalgia and rheumatoid arthritis. She indicated that she sometimes assists her mother with transferring from her bed and car. The Select In-Home Services Nurse testified that she agrees with the WVMi Nurse’s assessment in regard to the Claimant’s condition on the date of the PAS.
- 6) Aged/Disabled Home and Community-Based Services Manual Section 501 (D-2)- 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 501.3.1.1 (D-2) – 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 501.3.2 (D-2): 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)

Contenance (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. The Claimant was awarded two (2) deficits on her June 2008 Aged/Disabled Waiver Program medical reevaluation.
- 2) The Claimant's witnesses indicated that they sometimes assist the Claimant with bathing, dressing and transferring when she is having "bad days," but the Select In-Home Services Nurse testified that she agrees with the PAS findings. The Claimant was awarded a deficit for physical assistance with bathing on the PAS and she would not reach the required five (5) deficits if she should be awarded two (2) additional deficits for physical assistance with dressing and transferring. Therefore, addressing the issues of dressing and transferring is moot.
- 3) The required deficits have not been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

### IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program.

### X. RIGHT OF APPEAL:

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 17th Day of November, 2008.**

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**Pamela L. Hinzman  
State Hearing Officer**