



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

April 7, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 1, 2009. 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 503]

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  
[REDACTED] County Committee on Aging

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

-----,

**Claimant,**

**v.**

**Action Number: 08-BOR-2131**

**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 April 7, 2009 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 April 1, 2009 on a timely appeal filed September 22, 2008 and received by the Hearing Officer on October 30, 2008. The hearing was originally scheduled for January 22, 2008, but was rescheduled due to inclement weather.

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

**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  
-----, RN, Case Manager, Hampshire County Committee on Aging  
-----, Homemaker, Panhandle Support Services  
Kay Ikerd, RN, Bureau of Senior Services (participating telephonically)  
-----, RN, West Virginia Medical Institute (participating telephonically)

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 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) completed on August 18, 2008
- D-3 Notice of Potential Denial dated August 27, 2008
- D-4 Denial notice dated September 11, 2008

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

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical evaluation to determine if he 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 August 18, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified three (3) qualifying deficits for the Claimant in the areas of physical assistance with bathing, dressing and grooming.
- 3) The Claimant was sent a Notice of Potential Denial on August 27, 2008 (D-3) and was advised that he had two weeks to submit additional medical information for consideration.
- 4) The Claimant was sent a final denial notice on September 11, 2008 (D-4).

- 5) The Claimant and his witnesses contended that additional deficits should be awarded in the following areas:

***Inability to vacate the building in the event of an emergency-*** The Claimant testified that he would be unable to open his storm windows due to problems with his hand and would have to throw a chair through a window to vacate his residence in the event of an emergency. He stated that if he broke the window, however, he would be able to get out of the residence.

The Claimant was rated as requiring prompting/supervision to exit the building on the PAS and the WVMi Nurse testified that the Claimant had indicated he would be able to exit his home during an emergency. The PAS states that the Claimant reported he could open his windows, but the Claimant refuted that information during the hearing and clarified that he would have to break the window first. The nurse noted that the Claimant was able to walk and transfer in the home by holding onto furniture on the date of the assessment, and also has quad and regular canes available.

*Based on information presented during the hearing, no additional deficit can be awarded for physical inability to vacate. While the Claimant indicated he would have to throw a chair through his window, he stated that he would be able to vacate in the event of an emergency once he created an exit. In addition, the Claimant ambulated by holding onto furniture on the date of the assessment. Therefore, he would be able to exit through the door of his residence if that path was unobstructed and would not require physical assistance.*

***Walking-*** The Claimant testified that he is able to ambulate in his residence because his furniture has been strategically placed in a manner to provide him support.

The WVMi Nurse noted that walls, furniture and canes are all considered assistive devices.

*As the Claimant was rated on the PAS as requiring supervision/an assistive device to walk, no additional deficit can be awarded in this area. The Claimant's testimony does not differ from the PAS findings.*

***Physical assistance with eating-*** The Claimant and his homemaker testified that the homemaker peels his potatoes. The Claimant testified that he can cut up food, but is unable to peel.

The WVMi Nurse testified that the Claimant had reported he can cut food and feed himself on the date of the assessment. She indicated that the peeling of potatoes is considered food preparation and is not considered when assessing an individual's ability to eat.

*As the Claimant is able to feed himself once his food has been prepared, no additional deficit can be awarded in this area.*

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 (D-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. The Claimant was awarded three (3) deficits on his August 2008 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, no additional deficits can be awarded to the Claimant.
- 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 terminate the Claimant's benefits 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 7th Day of April, 2009.**

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**Pamela L. Hinzman**  
**State Hearing Officer**