



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

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

July 29, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 28, 2011. 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  
[REDACTED]  
BoSS  
WVMI

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

**IN RE:** -----,

**CLAIMANT,**

**v.**

**ACTION NO.: 11-BOR-1136**

**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 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 July 28, 2011 on an appeal filed April 21, 2011 and received by the Hearing Officer on May 17, 2011.

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

**II. PROGRAM PURPOSE:**

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 daughter

-----, Case Manager, [REDACTED]

-----, [REDACTED]

-----, Homemaker, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)

Debbie Sickles, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question 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 501.3, 501.3.1, 501.3.1.1, 501.3.2 and 501.3.2.1

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

**Department's Exhibits:**

D-1 Aged/Disabled Home and Community-Based Services Manual Section 501

D-2 Pre-Admission Screening (PAS) completed on March 15, 2011

D-3 Potential Denial Notice dated March 16, 2011

D-4 Denial Notice dated April 12, 2011

**Claimant's Exhibits:**

C-1 Information from [REDACTED] M.D., dated March 17, 2011

C-2 Letter from [REDACTED] M.D., dated May 25, 2011

**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 she continues to meet medical eligibility criteria for the program.

- 2) West Virginia Medical Institute (WVMI) Registered Nurse Debbie Sickles completed a Pre-Admission Screening (PAS) medical assessment on March 15, 2011 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits four (4) qualifying deficits in the areas of *inability to vacate the building in the event of an emergency, and physical assistance with bathing, dressing and grooming.*
- 3) The Claimant was sent a Potential Denial Notice on March 16, 2011 and was advised that she had two weeks to submit additional medical information for consideration. Additional information was submitted from [REDACTED] M.D., (C-1) however the documentation failed to change the PAS findings.
- 4) The Claimant was sent a final Denial Notice on April 12, 2011 (D-3).
- 5) Witnesses for the Claimant contended that additional deficits should be awarded in the following areas:

***Physical assistance with eating-*** The Claimant's representatives indicated she eats mainly soft foods and is unable to prepare her own meals.

The WVMI Nurse testified that the Claimant reported the ability to feed herself and cut her own food on the date of the assessment. Bureau of Senior Services Registered Nurse Kay Ikerd testified that meal preparation is not considered when determining an individual's ability to eat.

*As the Claimant reported the ability to eat and cut up her food unassisted on the date of the assessment, no deficit can be awarded in the area of physical assistance with eating.*

***Continence of Bowel-*** The Claimant's homemaker testified that the Claimant has bowel incontinence on some days.

The WVMI Nurse testified that the Claimant was rated as being occasionally incontinent of bowel during the assessment because she reported having accidents less than three times per week.

*A rating of occasional bowel incontinence is correct based on information provided to the WVMI Nurse on the PAS date. Therefore, no additional deficit can be awarded in this area.*

***One-person physical assistance with walking-*** The Claimant's witnesses testified that the Claimant is in the end stage of Chronic Obstructive Pulmonary Disorder and needs physical assistance with ambulation due to shortness of breath.

The WVMI Nurse testified that the Claimant was rated at Level 2 (supervised/assistive device) on the PAS in regard to ambulation because she reported using a roller walker and a cane as assistive devices. The nurse stated that the Claimant did not utilize an assistive device during an ambulation demonstration. She exhibited an unsteady gait, but denied recent falls. In addition, the Claimant reported using walls and furniture for support.

*As no information was provided to the WVMI Nurse during the PAS to indicate the Claimant required one-person physical assistance with ambulation, no additional deficit can be awarded in this area of functionality.*

**Medication administration-** The Claimant's witnesses testified that she becomes confused when taking medication, sometimes takes medication for the wrong day, and requires assistance in this area.

PAS notes indicate that the Claimant was rated as needing prompting/supervision to take medication. The WVMI Nurse testified that the Claimant reported needing assistance to open her medication bottles on the date of the assessment, however, she stated she could place pills in her hand and put them in her mouth unassisted.

*No testimony was provided to indicate that the Claimant is unable to place pills in her mouth once medication is sorted for her. Therefore, the WVMI Nurse correctly rated the Claimant as needing prompting/supervision in medication administration and no additional deficit can be awarded.*

**Orientation-** The Claimant's witnesses testified that she is frequently disoriented and confused.

The WVMI Nurse testified that the Claimant was rated as Level 1 (oriented) on the date of the assessment because she was able to tell the nurse the date, her address and her birth date. She also denied becoming confused.

*As the Claimant was oriented on the date of the assessment, no additional deficit can be awarded in this area.*

6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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 501.3.1.1 (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 501.3.2 (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 four (4) deficits on her March 2011 Aged/Disabled Waiver Program medical evaluation.
- 2) Information provided during the hearing does not support the awarding of additional functional deficits based on the Claimant's reported condition on the date of the PAS.

- 3) The Claimant's total number of deficits remains at four (4), rendering her medically ineligible for continued participation in 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 29th Day of July, 2011.**

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**Pamela L. Hinzman  
State Hearing Officer**