

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 28, 2005 for Ms. _____. 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 originally scheduled on February 9, 2005 on a timely appeal, filed January 20, 2005. The West Virginia Medical Institute requested to reschedule. The hearing finally convened on March 11, 2005.

It should be noted here that Ms. _____' Home and Community Based Services Benefits have been continued pending a hearing decision.

A pre-hearing conference was not held between the parties. Ms. _____ did not have legal representation in this particular matter.

All parties agreed to provide truthful information during the hearing

II. PROGRAM PURPOSE:

The program entitled Home and Community Based Services, is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request 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).

III. PARTICIPANTS:

_____, Claimant (Provided testimony by conference call)
_____, RN/Case Manager – Allied Nursing and Community Services (Provided testimony by conference call)
Libby Boggess, RN – Bureau of Senior Services (BoSS)
Sue Bailey, RN – West Virginia Medical Institute (WVMI)

Presiding at the hearing was Ray B. Woods, Jr., M. L. S., State Hearing Officer and, a Member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

Does Ms. _____ meet the medical eligibility for continued services, under the Home and Community Based Services Program?

V. APPLICABLE POLICY:

WV Provider Manual Chapters 570 PROGRAM ELIGIBILITY FOR CLIENT; 570.1 MEDICAL ELIGIBILITY; 570.1.a PURPOSE; 570.1.b MEDICAL CRITERIA.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

DEPARTMENT'S EXHIBITS:

- D-1 Memorandum dated 01/14/05 to Ms. _____ from BoSS re: Hearing Exhibits
- D-2 WV Provider Manual Chapters 570; 570.1; 570.1.a; 570.1.b
- D-3 PAS-2000 assessed 10/04/04
- D-4 Notice of Denial dated 12/21/04
- D-5 Notice of Potential Denial dated 12/06/04
- D-6 Letter from [REDACTED] Director – Office of Behavioral & Alternative Care dated 11/22/04, re: Notice of Decision Letters
- D-7 Scheduling Notice dated 02/07/05 (Rescheduled Notice)
- D-8 Scheduling Notice dated 01/20/05 (Initial Notice)
- D-9 Request for Hearing dated 12/07/04
- D-10 Fax from Kay Ikerd, RN to Ray Woods, State Hearing Officer dated 02/16/05 & 02/10/05 re: WVMi RN availability for hearing
- D-11 GroupWise Messages re: Scheduling

CLAIMANT'S EXHIBITS:

- C-1 Fax dated 01/04/05 from Allied Nursing and Community Services to State Hearing Officer with attached Hearing Request

VII. FINDINGS OF FACT:

- 1) Ms. Boggess reviewed the policy found in the WV Provider Manual Chapters 570 PROGRAM ELIGIBILITY FOR CLIENT; 570.1 MEDICAL ELIGIBILITY; 570.1.a PURPOSE; 570.1.b MEDICAL CRITERIA

2) Mrs. Sue Bailey reviewed Ms. _____' PAS-2000 assessed on October 4, 2004, in the following manner:

Question #24

Decubitus----- **Total = 0**

Question #25

In the event of an emergency, the individual can vacate the building, Independently.

Total = 0

Question #26:

- | | | |
|---------------------|-----------|------------------|
| a. Eating - 1 | Total = 0 | |
| b. Bathing - 2 | Total = 1 | |
| c. Dressing - 1 | Total = 0 | |
| d. Grooming -1 | Total = 0 | |
| e. Cont/Bladder - 1 | Total = 0 | |
| f. Cont/Bowel - 1 | Total = 0 | |
| g. Orientation - 1 | Total = 0 | |
| h. Transferring - 1 | Total = 0 | |
| I. Walking - 1 | Total = 0 | |
| j. Wheeling - 1 | Total = 0 | Total = 1 |

Question #27

None **Total = 0**

Question #28

The individual is capable of administering his own medications: Yes. **Total = 0.**

3) Ms. _____ had a total of one (1) deficit on the PAS-2000 assessed October 4, 2004. Five deficits are needed to be eligible for the Waiver Program.

4) Ms. _____ was issued a letter, dated November 22, 2004, from _____ Director – Office of Behavioral & Alternative Health Care. It stated in part, “WVMI is temporarily unable to issue notice of decision letters to certain recipients of waiver services who have been reassessed since September 21, 2004.”

5) A letter of “POTENTIAL DENIAL” was mailed to Ms. _____ on December 6, 2004. It requested additional medical information that may not have been considered.

6) The West Virginia Medical Institute notified Ms. _____ by letter dated December 21, 2004 that, she was no longer entitled to receive services under the A/D Waiver Program.

7) The Board of Review received Ms. _____' *Request for Hearing* on January 10, 2005. It was received by the State Hearing Officer on January 20, 2005.

8) The State Hearing Officer rendered a decision at the conclusion of the Fair Hearing. Ms. _____ does meet the medical eligibility for the Aged and Disabled Waiver Program.

VIII. CONCLUSIONS OF LAW:

1) WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

2) WV Provider Manual Chapter 570.1 MEDICAL ELIGIBILITY:

A QI under contract to BSS determines medical eligibility for the A/D Waiver Program.

3) WV Provider Manual Chapter 570.1.a 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 ADW services receives an appropriate LOC that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

4) WV Provider Manual Chapter 570.1.b MEDICAL CRITERIA:

An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. #24: Decubitus - Stage 3 or 4
- B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
- C. #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)
 - Grooming - Level 2 or higher (physical assistance or more)
 - Dressing - Level 2 or higher (physical assistance or more)
 - Continence - Level 3 or higher (must be incontinent)
 - Orientation - Level 3 or higher (totally disoriented, comatose)
 - Transfer - Level 3 or higher (one person or two persons assist in the home)
 - Walking - Level 3 or higher (one person assist 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.)
- D. #27: Individual has skilled needs in one or more of these areas - (g) suctioning, (h) Tracheostomy, (i) ventilator, (k) Parenteral fluids, (l) sterile dressings, or (m) irrigations.
- E. #28: Individual is not capable of administering his/her own medications.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the Department's proposal in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29