



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 11, 2005

[REDACTED]

Dear Ms. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 5, 2005. Your hearing request was based on the Department of Health and Human Resources proposal to discontinue benefits and services under the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver 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.

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 ' 570- 570.1b (11/1/03)].

The information which was submitted at your hearing revealed that at the time of the November 23, 2004 Pre-Admission Assessment, you did meet the eligibility criteria for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the decision of the Agency to discontinue your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
[REDACTED] WV Aging
[REDACTED] Power of Attorney
WVMI
BoSS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

██████████
March 8, 2005

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 5, 2005 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 initially scheduled for March 9, 2005 and then rescheduled at the request of the Hearings Officer. The hearing was convened on April 5, 2005 on a timely appeal filed January 12, 2005.

It should be noted that benefits were continued through this hearing process.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The Program entitled **Medicaid Title XIX Waiver (HCB)** 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
██████████, Claimant's guardian and POA
██████████ Central WV Aging
██████████ Co. Senior Center
██████████ Claimant's Homemaker
B. J. Sides, West Virginia Medical Institute, (WVMI)
Kay Ikerd, BoSS (by phone from BoSS)

██████████
April 11, 2005

V. Section Continued:

Presiding at the hearing was Sharon K. Yoho, 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 their decision to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Departments= Exhibits:

- Exhibit D-1 Aged/Disabled Home and Community Based Services Manual ' 560.1- 570.1b
- Exhibit D-2 Eligibility Determination, dated November 23, 2004
- Exhibit D-3 Pre-Admission Screening (PAS)-2000 dated November 23, 2004
- Exhibit D-4 Letter from Dr. ██████████ dated December 8, 2004
- Exhibit D-5 Letter from ██████████ RN, ██████████ County Senior Center dated December 7, 2004
- Exhibit D-6 Homemaker Plan of Care, ██████████ County Senior Center dated January 13, 2004
- Exhibit D-7 Letter of potential denial dated December 6, 2004
- Exhibit D-8 Letter of proposed termination dated January 4, 2005.

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) The claimant is a 51 year old female whose primary diagnosis is Hydrocephalus of Brain without Shunt. She lives alone in a ground floor apartment. She uses a walker and a wheelchair for mobility.
- (2) The PAS, Pre-Admission Screening, was completed in the claimant=s home on November 23, 2004. This assessment was completed with only the client and nurse present. Based on the observation by the evaluating nurse and input from the client, it was determined that the claimant=s condition at that time revealed only one qualifying deficit. This deficit was for incontinence of bladder.
- (3) The Claimant was sent a letter of Potential discontinuance of services on December 6, 2004.

██████████
April 11, 2005

VII. Section Continued:

This notice advised that additional information could be provided for a re-consideration. On December 28, 2004 additional information was provided. An evaluating nurse with WVMI reviewed information included in a statement from the claimant's physician, Dr. ██████████. Items considered were surrounding ██████████ inability to vacate, bath, and dress without physical assistance. Three additional deficits were assigned to the claimant's condition in these areas.

- (4) Dr. ██████████ statement included the following statement that was not fully considered: "She does have difficulty with transferring due to lower extremity spasticity and balance issues." Ms. ██████████ testified that the transfer statement included by the doctor was not considered because she herself had witnessed the claimant transfer from her wheelchair to a regular chair three or four times during her visit.
- (5) Testimony offered in this hearing, supports Dr. ██████████ written statement of the claimant's difficulty in transferring. Ms. ██████████ testified that Ms. ██████████ requires assistance in transferring. Ms. ██████████ testified that the claimant's ankles turn quite often, her balance is very bad and she has fallen in her apartment a few times. She says that there are days when she can transfer independently and days when she cannot. Ms. ██████████ testified that the claimant stumbles sometimes while using her walker. Ms. ██████████ testified that there are times when she needs help getting out of her wheelchair and into a chair.
- (6) Concerns were raised that this claimant likes to believe that she could be independent in many of her daily living activities when she actually is not.
- (7) **Aged/Disabled Home and Community Based Services Manual # 570 - Program Eligibility for Client:**
Applicants for the ADW Program must meet all of the following criteria to be eligible for the Program:
 - C. Be approved as medically eligible for NF level care.
- (8) **Aged/Disabled Home and Community Based Services Manual ' 570 - Program Eligibility for Client:**
Applicants for the ADW Program must meet all of the following criteria to be eligible for the Program:
 - B. Be a permanent resident of West Virginia. The individual may be de-institutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- (7) **Aged/Disabled Home and Community Based Services Manual ' 570.1.a. - Purpose:**
The purpose of the medical eligibility review is to ensure the following:
 - (1) New applicants and existing clients are medically eligible based on current and accurate evaluations.

VII. Section Continued:

- (2) 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.
 - (3) The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.
- (8) **Aged/Disabled Home and Community Based Services Manual # 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 person assist in the home)
 - Walking----- Level 3 or higher (one person or two 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 B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.
 - E. #28: The individual is not capable of administering his/her own medication.

██████████
April 11, 2005

VIII. DECISION:

In order to qualify for Aged/Disabled Waiver services, an individual must be found to have at least five deficits at the time of the Pre-Admission Screening. A review of the claimant's condition completed in the home, with only the claimant and the evaluating nurse present, clearly did not give an accurate picture of the inabilities of the claimant. Only one deficit was identified.

Three more deficits were added once information was received from her physician. During this hearing, information was documented from other persons who are closely involved with Ms. ██████████. Testimony and evidence clearly concludes that Ms. ██████████ has lower extremity spasticity and balance issues which hamper her ability to transfer independently and attempting to do so causes a safety issue in the home. She does require assistance to transfer safely. This claimant should have been assessed as having 5 deficits during her evaluation. Those being: incontinence, vacating, bathing, dressing and transferring.

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **reverse** the agency's proposed action to discontinue the services offered under the Aged/Disabled Title XIX (HCB) Waiver Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.