



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 1, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 26, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver Program.

In arriving at a decision, the State Hearings 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 continue to 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. [Aged/Disabled (HCB) Services Manual 570-570.1b (11/1/03)].

The information which was submitted at your hearing revealed that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services 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 Title XIX (HCB) Waiver Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
WVMI
BoSS
CWWAS

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

_____,

Claimant,

v. **Action Number:** _____

**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 July 1, 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 convened on April 26, 2005 on a timely appeal, filed January 26, 2005.

It should be noted here that the Claimant's benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending a hearing decision.

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 brother
_____, Homemaker RN, Helping Hands
[REDACTED] RN, CWVAS
Julia Foster, RN, WVMi
Kay Ikerd, RN, BoSS (by phone)

Presiding at the Hearing was Thomas E. Arnett, 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 Claimant continues to be medically eligible for services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 560 & 570.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
D-2 Medical Assessment, PAS-2000, 12/2/04
D-3a Notice of Potential Denial from WVMi dated 12/28/04
D-3b Notice of Termination/Denial dated 1/11/05

Claimant's Exhibits:

C-1 Correspondence from [REDACTED] MD, [REDACTED] Medical Center, dated 3/21/05

VII. FINDINGS OF FACT:

- 1) On December 2, 2004, the Claimant was reevaluated (medically assessed) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW.
- 2) The medical assessment (exhibit D-2) completed by WVMi determined that the Claimant is no longer medically eligible to participate in the ADW Program. On December 28, 2004, a notice of Potential Denial (exhibit D-3a), was sent to the Claimant requesting information regarding his medical condition that may not have been considered during the medical assessment. The Claimant was allowed (2) two weeks to provide the requested information; however, no additional information was received.

- 3) A termination notice (exhibit D-3b) was sent to the Claimant on January 11, 2005. This notice includes some of the following pertinent information:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate / deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 0 areas.

- 4) Julia Foster reviewed the PAS-2000 (exhibit D-2) she completed on December 2, 2004 and testified that the Claimant fails to demonstrate program qualifying deficits in any of the specified categories of nursing services.
- 5) Exhibit C-1 was entered on behalf of the Claimant to contest the medical assessment's findings regarding bathing, dressing and grooming. [REDACTED] correspondence, dated March 21, 2005, indicates that the Claimant has multiple medical problems including type II diabetes, hypertension, hypercholesterolemia, peripheral neuropathy and depression. He further indicates that the Claimant has "a little bit of dementia" and he's not able to care for himself. He concludes this correspondence by stating that the Claimant needs help with bathing, dressing and grooming. It should be noted that this document was received in excess of three (3) months after the assessment.
- 6) The Claimant's functional abilities in the home, specific to bathing, dressing and grooming, are addressed in the PAS-2000 medical assessment (D-2). (*Bathing*) – "The client reported he showers when someone tells him to do it and can do this himself." He also indicates that he can wash his own hair in the sink but usually has a caregiver do this for him. (*Dressing*) – "He reported as done self and that he can do socks and shoes also. This was confirmed by his brother." (*Grooming*) – "Client reported he shaves himself and does his own mouthcare, trims his own nails and toenails sometimes or the doctor does for him reported."
- 7) Testimony offered by and of behalf of the Claimant fails to substantiate that the Claimant requires "physical assistance or more" in bathing, dressing or grooming. A functional deficit in these categories of nursing services cannot be established.
- 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:

- C. Be approved as medically eligible for NF level of care.

9) Aged/Disabled Home and Community Based Services Manual § 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.

10) 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 – (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.
- E. #28: The individual is not (c) capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) A medical assessment was completed on the Claimant to determine continued medical eligibility for participation in the Aged/Disabled Waiver Program on December 2, 2004.
- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 3) The medical assessment completed by WVMH reveals that the Claimant fails to demonstrate any program qualifying deficits.
- 4) The evidence submitted on behalf of the Claimant fails to identify any additional deficits.
- 5) Whereas the Claimant exhibits 0-deficits in the specific categories of nursing services provided in policy, continued medical eligibility for the Aged & Disabled Waiver Services Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to terminate your benefits and services 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 1st Day of July, 2005.

Thomas E. Arnett
State Hearing Officer