



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 9, 2005

Dear Ms._____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 1, 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 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 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]

The information submitted at your hearing reveals that your medical condition 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 **reverse** the Agency's proposal to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
WVMI
BoSS
CCIL

**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 June 9, 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 convened on June 1, 2005 on a timely appeal filed January 24, 2005.

It should be noted here that benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending the results of the hearing.

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:

[REDACTED] RN, Case Manager, CCIL
[REDACTED] Homemaker, RN, West Virginia Choice
Kay Ikerd, RN, BoSS (participating telephonically)
Debra LeMasters, RN, WVMI (participating 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 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 PAS 2000 assessment completed December 20, 2004
- D-3 Termination notice dated January 11, 2005
- D-4 Notice of Potential Denial dated December 28, 2004

Claimant's exhibits

- C-1 Letter from Dr. [REDACTED]
- C-2 Letter from Dr. [REDACTED]

VII. FINDING OF FACTS:

1. The Claimant=s Aged & Disabled Waiver case, hereinafter ADW, was undergoing an annual medical reevaluation to verify continued medical eligibility.
2. West Virginia Medical Institute completed a medical assessment (D-2) on December 20, 2004 and determined that the Claimant is no longer medically eligible to participate in the ADW Program.
3. The Claimant was notified of the potential denial on December 28, 2004 (D-4) and advised that she had two weeks to submit additional medical information. Ms. Lemasters testified that no additional information was submitted.
4. On January 11, 2005, a termination notice (D-3) was sent to the Claimant.
5. Ms. Lemasters reviewed the PAS 2000 (D-2) that she completed for the Claimant on December 20, 2004. She testified that her assessment of the Claimant revealed two (2) program qualifying deficits in the following areas of the PAS:

Question 26c- Dressing
Question 26e- Bladder Incontinence

6. Ms. _____ addressed the following areas of the PAS 2000 in regard to potential deficits:

Vacating- Ms. _____ testified that her mother would not hear a smoke detector and be capable of exiting safely if she was sleeping when a fire broke out in her residence. She indicated that she informed Ms. Lemasters that her mother would be unable to vacate on the date the assessment was completed. The Claimant concurred that she would have been unable to vacate the residence in the event of an emergency at the time of the assessment. Ms. Lemasters disagreed and stated she was told the Claimant could vacate with supervision in the event of an emergency.

Bathing- Ms. _____ testified that her mother is unable to bathe herself an average of one day per week due to her health condition. Ms. _____ stated that she informed Ms. Lemasters that her mother could not take care of herself on certain days, and the PAS nurse's comments indicate that Ms. _____ stated she washes her mother's feet and legs because the Claimant becomes dizzy when bending. The Claimant concurred that she needed assistance with bathing and grooming at the time the PAS was completed. Ms. Lemasters responded that the Claimant's homemaker indicated on the date of the assessment that she did not assist the Claimant with bathing or dressing, and the Claimant indicated that she washed her own feet and legs.

Grooming- Ms. _____ testified that her mother requires assistance with her hair and mouth care on certain days. In addition, the Claimant indicated that her homemaker has applied lotion to her back for some time.

Orientation- Ms. _____ indicated that her mother has signs of early dementia, forgets to take medications and forgets doctor appointments. Ms. Lemasters indicated the Claimant was oriented on the date of the assessment.

Walking- Ms. _____ testified that her mother walks with a cane, becomes dizzy and has a history of falling. She said the Claimant utilizes a wheelchair for lengthy walking, but does not use a wheelchair in the home. At times the Claimant needs someone to hold onto her arm when walking. Ms. Lemasters indicated that the Claimant walked through the house with a steady gait on the date of the assessment and did not require hands-on assistance.

Medication administration- Ms. _____ indicated that her mother is unable to correctly administer medications so the drugs are organized in a pill box. The Claimant can swallow the medication, but needs prompting to take it on schedule. Ms. _____ indicated that she draws and administers insulin to her mother when her mother is having a bad health day and also rotates insulin injection sites. Nursing comments on the PAS assessment indicate the Claimant "draws up and gives her own insulin, daughter stated she gives her mother insulin injections also in the arms, client is unable to self inject in arms, by daughter giving injections in arms they can rotate more sites."

7. A letter from Dr. _____ (C-2)- which was clearly misdated for January 6, 2004 as a result of a clerical error, but which Ms. _____ stated was obtained in January 2005- states, in part:

I personally evaluated the patient. She has multiple issues regarding her quality of life

and her deteriorating health. When personally interviewing the patient, she does have signs of early dementia and is unable to recall the medications that she is on at times. It has been confirmed by family members in which she needs to be prompted to take medications along with missed medical appointments. Regarding her other medical issue, which will be her diabetes mellitus, she has developed significant lower extremity ulcerations which requires wound management. The patient requires assistance with her grooming and bathing situations in the home. The patient also suffers from urinary stress and urge incontinence which requires meticulous care to her grooming and bathing; which is difficult for the patient to achieve independently. The patient denies the need for assistance; however, realizes that her current physical condition does not allow her to complete the tasks in a timely manner leaving her extremely fatigued and lethargic. The patient has admitted to me that over the past year she has become less independent and in need of further care with daily activities.

8. Aged/Disabled Home and Community-Based Services Manual ' 570 (D-1) - 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 (5) 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 (c) capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

As a result of testimony and evidence presented during the hearing, additional deficits are awarded in the areas of bathing, grooming and medication administration. Both the Claimant and her daughter indicated that the Claimant required assistance with bathing and grooming at the time the PAS assessment was completed. Ms. _____ had indicated at the time of the assessment that she washes her mother's feet and legs as a result of her mother's dizziness. Ms. _____ also testified that her mother requires assistance with grooming on certain days as a result of her health condition. While the Claimant originally denied these needs at the time of the assessment, a letter from Dr. _____ documents the need for assistance with grooming and bathing. Therefore, I am convinced the Claimant requires assistance with bathing and grooming on a regular basis.

The Claimant is able to swallow oral medication, however, Ms. _____ testified that the Claimant is unable to administer insulin at all times. Ms. _____ admitted that she administers her mother's insulin partly to rotate injection sites, but that there are some days when the Claimant is physically unable to administer her own insulin.

Since the Claimant was oriented on the date of the assessment and walked through the residence unassisted, no deficits are awarded for orientation and walking. The Claimant's ability to vacate at the time of the assessment is unclear, so no deficit was awarded in this area.

This brings the Claimant's total number of deficits to five (5), the required number for Aged/Disabled Waiver Program qualification.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's 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.