



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

July 27, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 8, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services 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 Sections 570- 570.1b].

Information submitted at your hearing revealed that you continue to meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits 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
BoSS
WVMI
First Care Services
[REDACTED] Esq., Legal Aid of WV
Alva Page III, Esq., BMS

**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 27, 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 June 8, 2005 on a timely appeal filed January 12, 2005. The hearing was originally scheduled for April 26, 2005, but was rescheduled for May 11, 2005 and again for June 8, 2005 by the hearing officer due to scheduling conflicts. The hearing record remained open for 30 days to allow the attorneys to submit written arguments.

II. PROGRAM PURPOSE:

The program entitled Aged/Disabled Waiver 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
_____, Esq., Legal Aid of WV
_____, Case Manager, First Care Services
_____, RN, Pro Careers
_____, Claimant's daughter-in-law and Homemaker with Pro Careers
Alva Page III, Esq., Bureau of Medical Services (participating telephonically)
Kay Ikerd, RN, BoSS (participating telephonically)
Sue Bailey, 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. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 570
- D-2 Pre-Admission Screening (PAS) 2000 assessment completed on November 22, 2004
- D-3 Letter of Potential Denial dated December 6, 2004 and termination letter dated January 5, 2005
- D-4 Letter from _____ RN, Case Manager, of First Care Services dated December 16, 2004

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing an evaluation to determine initial medical eligibility.
- 2) West Virginia Medical Institute completed a medical assessment (D-2) on November 22, 2004 and determined that the Claimant is not medically eligible to participate in the ADW Program.

- 3) The Claimant was notified of the potential denial (D-3) on December 6, 2004 and advised that she had two weeks to submit additional medical information. The Claimant submitted a letter (D-4) from [REDACTED] RN, Case Manager, of First Care Services. In the letter, Ms. [REDACTED] stated that she believes the Claimant requires assistance in dressing on some days as a result of arthritis. Ms. [REDACTED] stated that there was no supportive information that the Claimant was unable to dress herself so no deficit was granted as a result of the letter.
- 4) On January 5, 2005, a denial notice (D-3) was sent to the Claimant.
- 5) Ms. Bailey reviewed the PAS 2000 (D-2) that she completed for the Claimant on November 22, 2004. She testified that her assessment of the Claimant revealed four (4) program qualifying deficits in the following areas of the PAS:

Question 25- Physical inability to vacate the building in the event of an emergency

Question 26b- Bathing

Question 26d- Grooming

Question 26e- Bladder incontinence

- 6) Ms. _____ testified that she suffers chronic pain in her arms and fingers which results in numbness and cramping. She stated that she has difficulty buttoning her clothes and sometimes requires assistance. She also indicated that she wears slip-on shoes because she is unable to tie her shoes. If she did not wear slip-on shoes, she would require assistance in putting on socks and shoes. She stated her homemaker helps her dress when she has pain in her arms.

Ms. [REDACTED] testified that she has been the Claimant's case manager for two years and the Claimant has indicated that she needs assistance getting dressed on some days. Ms. [REDACTED] indicated that she does not believe the Claimant's condition has improved. She stated that her letter (D-4) was submitted based on the Claimant's statements regarding her inability to dress.

Ms. [REDACTED] an RN and Homemaker Supervisor with Pro Careers, stated that based on information she has received from the Claimant's case manager and homemaker that she is under the impression the Claimant does require assistance dressing at times as a result of arthritis and degenerative joint disease.

_____, the Claimant's daughter-in-law and homemaker, testified that she assists the Claimant with buttoning clothes and tying shoes. She stated the Claimant requires assistance because she is arthritic and is not always able to dress herself.

Ms. Bailey testified that the Claimant said she was able to dress herself when asked during the assessment. The Claimant had stated that she was able to put on her socks and shoes, as well as fasten buttons. Ms. Bailey testified that the Claimant's legs were crossed while she was sitting on the couch, which would indicate that she is able to bend her legs to put on socks and shoes. The Claimant's homemaker was present during the assessment but did not provide any information concerning the Claimant's ability to dress.

- 7) Aged/Disabled Home and Community-Based Services Manual Section 570 (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.

- 8) Aged/Disabled Home and Community-Based Services Manual Section 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 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.

- 9) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW 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.

VIII. CONCLUSIONS OF LAW:

As a result of testimony presented during the hearing, one (1) additional deficit is awarded to the Claimant in the area of physical assistance with dressing. The Claimant testified that she suffers chronic pain in her arms and fingers and requires physical assistance with dressing as a result of this condition. In addition, testimony from the Claimant's witnesses regarding her need for assistance in this area is credible in light of the Claimant's arthritis and degenerative joint disease.

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

ENTERED this 27th Day of July, 2005.

**Pamela L. Hinzman
State Hearing Officer**