



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

May 26, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 12, 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 does not require 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 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
[REDACTED] Esq.
[REDACTED] Esq., BMS
WVMI
BoSS
CWVAS

**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 May 26, 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 May 12, 2005 on a timely appeal filed February 17, 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:

_____, Claimant
_____, Attorney for Claimant
_____, In-Home Care Provider
_____, RN, Case Manager, Central WV Aging Services
Kelly Ambrose, Attorney, Bureau for Medical Services (participating telephonically)
Kay Ikerd, RN, BoSS (participating telephonically)
Julia Foster, 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 6, 2004

Claimant's Exhibits

C-1 Series of Claimant's medical records

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 6, 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 January 7, 2005 and advised that she had two weeks to submit additional medical information.
4. On January 21, 2005 and February 4, 2005, termination notices were sent to the Claimant.
5. Ms. Foster reviewed the PAS 2000 that she completed for the Claimant on December 6, 2004. Ms. Foster testified that her assessment of the Claimant revealed three (3) program qualifying deficits in the following areas:
 - Question 26b- Bathing
 - Question 26c- Dressing
 - Question 26d- Grooming
6. Ms. Foster stated that additional medical information was received from Dr. [REDACTED] and Dr. [REDACTED] (C-1) in response to the Letter of Potential Denial, however, this information did

not change the PAS findings.

7. Ms. [REDACTED] questioned the Claimant and Ms. [REDACTED] regarding potential deficits the Claimant has in the areas of eating, transferring, ambulating, ability to vacate in the event of an emergency, bladder incontinence and prescription administration.

Ms. _____ testified about her medical problems which include hypertension, diabetes, disc deterioration, arthritis of the spine and knees, problems with her left shoulder resulting from a torn rotator cuff and depression. She stated she cannot stand for more than five minutes at a time to prepare food. She stated her ability to ambulate is declining and that she uses an assistive device. In addition, she discussed the difficulty she faces when attempting to rise from a seated position, particularly from a low chair or commode, and discussed bruises she incurred when trying to get in and out of an automobile. Ms. _____ stated that it would be “very doubtful” that she could exit her residence in the event of an emergency, particularly in the morning hours when her problems with her hip and leg make it difficult for her to immediately get out of bed. If an emergency occurred, Ms. _____ stated that her husband would be unable to help her as he would require assistance to exit the residence. Ms. _____ testified that she takes 14 different types of medications or vitamins and has difficulty keeping track of them. She stated that her homemaker helps her order the prescription drugs and organizes the medication. Regarding incontinence, Ms. _____ - who testified that she wears a back brace and has been wearing a TENS Unit since January 2005 - stated that she leaks urine about six to eight times per week, but acknowledged that she had infrequent incontinence at the time the PAS was completed. Ms. _____ testified that questions on the PAS were asked quickly and that she attempted to respond in a prompt manner.

Ms. [REDACTED] who has worked with Ms. _____ for the past two to three years as a nurse and case manager, testified that she has “serious doubts” about the Claimant’s ability to vacate her residence in the event of an emergency. She stated she has observed the Claimant’s declining condition over the past few years, and that Ms. _____ has reported difficulties in getting out of bed and a need to sit for long periods of time upon rising. Ms. [REDACTED] who was present during the PAS completion, stated that she does not question what the Claimant self-reports. She stated the Claimant informed Ms. Foster that she had occasional incontinence and was not wearing protective pads at the time of the assessment. In addition, she testified that she has not witnessed any problems regarding the Claimant’s ability to enter and exit a vehicle, but has observed the Claimant rock several times before rising from a chair. She stated that the Claimant ambulated during Ms. Foster’s visit and had reported that she sometimes uses a cane or walker. Ms. [REDACTED] testified that the Claimant can feed herself, but has problems opening cans and containers.

8. Ms. Foster testified that a deficit was not awarded for vacating since the Claimant ambulated in her home without an assistive device on the date the PAS was completed, and could exit her residence and get into her vehicle. She stated that while the Claimant may be unable to open a jar, this is considered meal preparation and not a physical inability to eat. Ms. Ambrose pointed out that information on the PAS is based on the Claimant’s functional abilities on the date the assessment was completed.
9. 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.

10. 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.

11. 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 presented by the Claimant and her witness, the Claimant is assigned one (1) deficit for inability to vacate the building in the event of an emergency. Based on the Claimant's testimony, it is clear that she would encounter problems with vacating if an emergency should occur during the night or early morning hours since her medical condition prevents her from immediately exiting her bed.

No other points are awarded as the Claimant was able to ambulate and transfer without assistance on the date of the assessment, and reported that she did not suffer from frequent bladder incontinence on that date. Testimony regarding the Claimant's ability to eat independently focused on meal preparation, which is not considered a deficit. The Claimant testified that her homemaker assists her in ordering prescription drugs and organizes the medications, however, no testimony was offered regarding the Claimant's inability to administer the medications.

This change brings the Claimant's total number of deficits to four (4). Therefore, the Claimant continues to lack the total of five (5) deficits required to meet ADW medical eligibility requirements.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** 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.