



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 14, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 6, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to deny 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 deny 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
MSHH

**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 14, 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 6, 2005 on a timely appeal filed February 10, 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

_____, Case Manager, Americare Management

Kay Ikerd, RN, BoSS

Stephanie Schiefer, RN, WVMI

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

The hearing was conducted telephonically with all parties.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Claimant is 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 January 4, 2005
- D-3 Notice of Denial dated February 2, 2005
- D-4 Notice of Potential Denial dated January 18, 2005
- D-5 Letter from Dr. [REDACTED] dated January 25, 2005

VII. FINDINGS OF FACTS:

1. The Claimant applied for the Aged & Disabled Waiver Program, hereinafter ADW, and a medical evaluation was completed to determine her eligibility.
2. West Virginia Medical Institute completed a medical assessment (D-2) on January 4, 2005 and determined that the Claimant is not medically eligible to participate in the ADW Program.
3. The Claimant was notified of the potential denial on January 18, 2005 (D-4) and advised that she had two weeks to submit additional medical information. The Claimant submitted a letter from Dr. Ryan Newell dated January 25, 2005 (D-5). The letter states, in part:

I have been treating Ms. ____ for some time and I feel that she should qualify for this (Medicaid Waiver) program. She has a number of medical problems, which include diabetes mellitus, hypertension, hyperlipidemia, and arthritis. This patient has difficulty walking, opening food cans, bathing and caring for herself.

4. On January 13, 2005, a termination notice (D-4) was sent to the Claimant.
5. Ms. Schiefer reviewed the PAS 2000 (D-2) that she completed for the Claimant on January 4, 2005. Ms. Schiefer testified that her assessment of the Claimant revealed zero (0) program qualifying deficits. Ms. Schiefer stated she had reviewed the letter from Dr. [REDACTED] (D-5) but the letter failed to change items on the PAS assessment.
6. Ms. [REDACTED] who met Ms. _____ for the first time on the date of the hearing, stated that she

had questioned Ms. _____ about areas of the PAS prior to the hearing. She stated that Ms. _____ denied problems with choking while eating, but said she sometimes becomes short of breath. She stated Ms. _____ occasionally needs assistance with dressing because she is unsteady on her feet, and that she has difficulties with grooming due to pain in raising her arms as a result of arthritis. The Claimant has difficulty getting in and out of the bathtub and washes herself in the sink. In addition, the Claimant occasionally leaks urine but does not wear protective pads. The Claimant uses a cane for walking and transferring, and Ms. [REDACTED] stated that she would be concerned about the Claimant's ability to vacate in case of an emergency after observing her on the date of the hearing. Ms. _____ testified that she uses a walker to get to her vehicle, and pays someone to carry in food and take her to doctor's appointments. Ms. Ikerd responded that she feels Ms. [REDACTED]'s information is irrelevant since she had just met the Claimant on the date of the hearing and the PAS was completed in January 2005. Nurse's comments on the PAS indicate that the Claimant stood at the doorway to greet Ms. Schiefer on the date of the PAS assessment and kept a four-pronged cane beside her during the interview.

7. 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.

8. 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.

9. 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:

1. As a result of evidence and testimony presented during the hearing, deficits could potentially be awarded in the areas of dressing and grooming. It was noted on the PAS that the Claimant utilizes an assistive device for walking and transfers, but no deficits are awarded for this level of need. Information concerning the Claimant's ability to vacate on the date of the assessment is unclear. Even if two (2) deficits were awarded in the areas of dressing and grooming, this would fall short of the five (5) deficits required for Aged/Disabled Waiver Program eligibility and the Claimant would not be medically eligible.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Agency's decision to deny 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.