



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
June 13, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 8, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue your benefits/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.

Medicaid, Aged/Disabled (HCB) Title XIX Waiver is granted to those individuals who continue to meet all eligibility requirements. 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. In order to medically qualify for Aged/Disabled Waiver services an individual must have a total of five (5) qualifying deficits in specific categories of nursing services. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b (11/1/03)].

The information submitted at your hearing established 5 qualifying deficits, demonstrating that you require the *level of care* commonly provided in a nursing facility.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to discontinue your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the January 13, 2005 notification letter.

Sincerely,

Ron Anglin
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Boggess, BoSS
Oretta Keeney, WVM
[REDACTED] Central WV Aging Services

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

_____,

Claimant,

Action Number 05-BOR- 4799

v.

**West Virginia Department of
Health and Human Resources,**

Respondent.

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 13, 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 8, 2005 on a timely appeal requested February 14, 2005 and received by the State Hearings Officer March 18, 2005. All persons giving testimony were placed under oath. Benefits have continued.

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], claimant
[REDACTED] CM, Central WV Aging Services
[REDACTED] CM/RN
[REDACTED] homemaker

Libby Boggess, RN, Bureau of Senior Services (by phone)

Jane Meadows, RN, West Virginia Medical Institute (by phone)

Presiding at the hearing was Ron Anglin, 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 ' 570- 570.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1- A/D Waiver Manual 560.1- 570.1.b
E-2- WVMI Independent Review (PAS) 10/14/04
E-3- Notification 12/6/04 (Potential Denial)
E-4- Letter CMA to WVMI, 12/20/04
E-5- Statement from Dr [REDACTED] 12/9/04
E-6- Notification, 1/13/05 (Termination)
C-1- Statement from Dr [REDACTED] 12/22/04

VII. FINDINGS OF FACT:

(1) The claimant=s A/D Waiver case was due for an annual review and a WVMI Independent Review (E-2) was completed by the WVMI on October 14, 2004. WVMI determined that the claimant was no longer medically eligible for Waiver services and a notification of potential closure was mailed December 06, 2004. Additional information was submitted by the CMA December 20, 2004 (E-4 and 5). A termination notification was then mailed to the claimant January 13, 2005. A hearing request dated February 1, 2005 was received by BMS February 14, 2005 and by the BOR/Hearings Officer March 18, 2005. The claimant was notified of the hearing date in a notification dated March 21, 2005. The hearing was convened April 8, 2005. Benefits have been continued pending a hearing decision.

(2) During the hearing, Exhibits as noted in Section VI above were presented.

(3) Libby Boggess provided information concerning waiver program policy and requirements from Exhibit E-1.

(4) Jane Meadows noted from the evaluation (E-2) which she completed 10/14/04 in the claimant=s home. Claimant found to be physically unable to vacate in an emergency based at least partially on 12/9/04 statement (E-5). Under item #26, claimant had qualifying deficits in bathing and continence. Claimant told her that she was able to dress and groom herself. Claimant said she needed no assistance with medication administration. Total deficits found were 3. Observed claimant climbing stairs and walking independently. Claimant did not use oxygen continuously.

(5) _____ testified that she has been diagnosed with arthritis in her right shoulder- causing pain and vertigo. Climbing steps does get her out of breath. She gets very dizzy. She doesn't recall conversation with Meadows. Her Dr is concerned with her lungs. If she doesn't feel good aide washes her hair and stays in bathroom when she showers. Cannot bend down or pull legs up to put shoes on. Aide helps her in grocery store and she uses motorized cart. Tries not to use oxygen 24 hours. Feels she needs assistance in grooming, dressing, and transportation. Cannot always raise her arms to comb or wash care. Husband also receives ADW services. Have neuropathy on left side of her body. Feels medication could be responsible for her responses to Meadows.

(6) _____ testified claimant has been on program about 3 ½ years. Feels claimant needs assistance with bathing, dressing and grooming as is stated in Dr _____ statement of 12/22/04 (C-1).

(7) _____ testified that she helps claimant in shower and washes her hair. She has been in the home since March.

VIII. CONCLUSIONS OF LAW:

(1) Aged/Disabled Home and Community Based Services Manual ' 570 reveals that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care.

(2) 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 assessment elements on the medical evaluation- Decubitus - Stage 3 or 4; in the event of an emergency, the individual ability to vacate a building; functional abilities of individual in the home (eating, bathing, grooming, dressing, continence, orientation, transferring, walking, wheeling); skilled needs; and ability to self-administer medication. (see part IX below)

IX. DECISION:

The agency acknowledged **3** qualifying deficits – the ability to vacate a building, bathing and incontinence. Evidence provided as to the claimant's ability to groom and dress independently- indicate that substantial deficits exist in both categories. The claimant testified that she requires assistance with grooming and dressing- she cannot raise her arms to comb or wash her hair and is unable to put on her shoes without assistance. Statements from Drs. [REDACTED] dated 12/9/04 and 12/22/04 support the claimant's need for assistance in these 2 categories. The claimant alleged that medication effects may have accounted for inaccuracy in information provided during the 10/14/04 interview. Evidence provides some support for this position based on the number and variety of medication documented.

In conclusion, evidence offered established 5 qualifying deficits. This number of deficits demonstrates that an individual requires the level of care provided in a nursing facility or the Medicaid (HCB) Waiver Program. I am therefore ruling to **reverse** the proposal of the Agency to terminate benefits under the Medicaid Waiver Program as set forth in the January 13, 2005 notification.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 13th Day of June, 2005

**Ron Anglin
State Hearing Examiner**