



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 28, 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 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
_____, Claimant's representative
_____, Claimant's representative
Catholic Community Services

**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 28, 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 18, 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:

Kay Ikerd, RN, BoSS

Debra Lemasters, 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 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 January 11, 2005
- D-3 Termination notice dated February 2, 2005
- D-4 Notice of Potential Denial dated January 14, 2005
- D-5 Letter from Dr. [REDACTED] dated January 20, 2005

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 January 11, 2005 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 14, 2005 (D-4) and advised that she had two weeks to submit additional medical information.
4. On February 2, 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 January 11, 2005. She testified that her assessment of the Claimant revealed four (4) program qualifying deficits in the following areas of the PAS:

- Question 26b- Bathing
- Question 26c- Dressing
- Question 26d- Grooming
- Question 26e- Bladder Incontinence

Additional information was received (D-5), however, the data did not change the PAS findings.

Ms. Lemasters testified that the Claimant was alert and oriented on the date of the assessment. She stated the Claimant indicated she could vacate independently in the event of an emergency, recently drove her car to Wal-Mart, cuts her own food, and draws and administers her own insulin although sometimes her daughter chooses to do this.

6. Ms. _____ stated she was unaware that the assessment was taking place because her mother forgets information. She stated that another individual should have been present on the date of the assessment because her mother provided incorrect information. She testified that her mother does not remember to take her medication and does not draw or administer her own insulin. In addition, Ms. _____ indicated her mother's driving is limited and the family does not want her to drive at all as she suffers blackouts. The Claimant cannot always put medication in her nebulizer and sometimes relies on others to complete this task. The Claimant's oral medications are placed in a pill box, however, the Claimant is able to take them in her hand and swallow them. Ms. _____ and Mr. _____ indicated that their mother is unable to administer her own insulin. Ms. _____ testified that she cannot see the fine lines on her syringes to draw the insulin, and also stated she cannot give herself an injection due to problems with her arms and shoulders. Ms. _____ stated her mother must have misunderstood questions on the date of the assessment because family members have administered her insulin for years.

7. Ms. Ikerd responded that the Claimant's condition sounds very different than it appeared on the date of Ms. Lemasters' assessment. During the assessment, it was noted the Claimant had a good grasp and lit cigarettes. Ms. Lemasters indicated the Claimant used fine motor skills and did not have tremors. She was able to sign her name on a line and read the labels on her medication.

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 presented by the Claimant and her witnesses, one (1) additional deficit is awarded for physical inability to administer medication (insulin). The Claimant's daughter indicated her mother has not self-administered insulin for years and did not provide accurate information on the date of the PAS assessment. The Claimant indicated she cannot see fine lines on syringes and is unable to self-administer the insulin due to problems with her arms and shoulders.

The additional deficit brings the Claimant's total number of deficits to five (5), the number required to meet Aged/Disabled Waiver Program eligibility guidelines.

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.