



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, West Virginia 24901
Telephone (304) 647-7476 Fax: (304) 647-7486

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 16, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 17, 2005 for the Aged/Disabled Home and Community Based Services Waiver (ADW) Program. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services.

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 Home and Community Based Services Waiver (ADW) Program is based on current policy and regulations. One of these regulations state as follows: 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 PAS. (Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003)

The information which was submitted at your hearing revealed that after review of the current PAS-2000, you do not meet the five (5) deficits needed in order to qualify medically for the ADW Program.

It is the decision of the State Hearing Officer to uphold the proposal of the Agency to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] Americare Management Services, Inc.
[REDACTED] Genzyme Corporation
Brian Holstine, BoSS
Oretta Keeney, WVM

**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 17, 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 May 17, 2005 on a timely appeal, filed January 24, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

_____, Oral Interpreter
_____, Case Manager, AmeriCare Management Services, Inc.
_____, Patient Care Liaison, Genzyme Corporation, Witness
for the Claimant
_____, Homemaker
Karen Keaton, RN, WVMI
Brian Holstine, LSW, BoSS

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the claimant continues to meet the medical requirements needed to receive ADW services.

V. APPLICABLE POLICY:

Section 570 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility

criteria for the program as

determined by the county DHHROffice, or the SSA if an active SSI recipient.

- E. Choose to participate in the ADW Program as an alternative to NF care.

Section 570.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

Section 570.1.a of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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 level of care (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.

Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

An individual must have five 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 persons assist in the home)

Walking - Level 3 or higher (one 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 - (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

E. #28: Individual is not capable of administering his/her own medications.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits:

- Exhibit D-1) Sections 570, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003
- Exhibit D-2) Hearing Request received 01/24/05
- Exhibit D-3) Form PAS-2000 dated 11/12/04
- Exhibit D-4) Notification letter dated 12/30/04
- Exhibit D-5) Notice of potential denial dated 12/07/04

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of ADW services.
- 2) A medical assessment was completed 11/12/04. (Exhibit D-3) The claimant was notified in a letter dated 12/30/04 that services were being terminated. Reason: Only three deficits were found during the assessment - bathing, dressing and skilled needs.. (Exhibit D-4) The claimant requested a hearing 01/24/05. (Exhibit D-2)
- 3) Karen Keaton reviewed the PAS-2000 completed 11/12/04 (Exhibit D-3) The findings were:
 - #24 No Decubitus
 - #25 In the event of an emergency, the individual can vacate the building with supervision.
 - #26a Eating: Level 1 Self/Prompting:
 - #26b Bathing: Level 2 Physical Assistance:
 - #26c Dressing: Level 2 Physical Assistance
 - #26d Grooming: Level 1 Self/Prompting:
 - #26e Bladder: Level 1 Continent
 - #26f Bowel: Level 1 Continence
 - #26g Orientation: Level 1 Oriented
 - #26h Transferring: Level 1 Independent
 - #26i Walking: Level 2 Supervised/Assistive Device

#26j Wheeling: Level 1 No Wheelchair
#27 Special Needs - Yes - Parental Fluids & Skin Care

#28 Individual is capable of administering her own medication .

Present during the assessment was [REDACTED], the claimant's homemaker at the time.

Three deficits were found - Needs physical assistance with bathing and dressing. Skilled Needs - Gets IV infusion of fabrazyme every other week by Dr. [REDACTED].

4) The claimant has diagnoses of Fabry's disease - causes fat deposits in all organs - a hereditary metabolic disease, HTN, UTI, Hypothyroid, Osteoporosis, and Hypercholesterol. (Exhibit D-3)

5) Ms. [REDACTED] testified she cannot argue with the evaluation. She does a lot of things because she will not give up. She is not saying there are times she does not have difficulties. As long as she can, she is going to do it. The way she was educated as a nurse you do as much as you can as long as you can. She knows what a nursing home patient is as she worked in geriatrics. She does not want to give up her independence. She is not going to give up.

6) Ms. Keaton testified that the IV infusion of fabrazyme every other week is a skilled need. The ADW Program is not for skilled need. The medication administration deals with the medication the claimant takes on a daily basis in the home. Ms. Keaton noted on the evaluation the claimant's apartment is on ground level. There is one small step down into the apartment. The claimant does have a handicapped fire alarm system and explained with supervision, could vacate the building in the event of an emergency. .

7) Ms. [REDACTED] testified that the fire alarm system is a strobe light. If the claimant is sleeping or in the bathroom in the shower, she would not see the flash. The claimant would not be able to evacuate. Someone is going to have to come in and get her out. If she had to get out in a hurry, she could not vacate on her own. The enzyme treatment will be a lifelong need. She needs those meds in order to manage the disease. This administering of the IV

fluids is a skilled need and the claimant is receiving services by a home health agency for this skilled need. .

8) Ms. [REDACTED] discussed Fabry's disease. It is a rare, genetic condition. It is chronic and progressive in nature. There is an essential enzyme missing in the body which results in the accumulation of a complex fat/sugar substance in the tissues and vessels throughout the body. It narrows the blood vessels and dilates them. It affects every organ system in the body. Ms. [REDACTED] is a carrier. Unlike other genetic diseases, the carrier has the disease. Both men and women can have the disease. It usually present in childhood but does not show up until adulthood when patients start having problems. These problems are going to be kidney related, heart related, and brain related. Milder symptoms will be terrible episodes of pain, severe abdominal pain and GI problems, anemia, fatigue and decreased perspiration. Recent studies have shown there are psycho/social issues as well. In Ms. [REDACTED]'s mind, it is the Fabry which is causing all of Ms. [REDACTED]'s health problems including her deafness. This disease is progressive and will eventually lead to kidney failure, several people have had strokes, and various heart problems. The enzyme replacement therapy is the only thing available for these individuals. It stops the progression of the disease and actually stops the buildup in the vessels if it has not gone on too long.

VIII. CONCLUSIONS OF LAW:

- 1) 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 PAS.
- 2) Three deficits were found on the assessment completed 11/12/04. Those were physical assistance with bathing and grooming and skilled need for parental fluids.
- 3) There was convincing testimony that the claimant would be physically unable to vacate her home in the event of an emergency. Yjis would count as a deficit.
- 4) The claimant is capable of administering her own medication. She has a skilled need for parental fluids which counted as a deficit

on the PAS completed

11/12/04.

5) A total of four deficits were found.

6) The required five (5) deficits could not be established. Therefore, the claimant does

not meet the medical qualifications for Aged/Disabled Waiver services.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does not continue to meet the medical criteria for the ADW Program. The Agency is upheld in the proposal to terminate the claimant's services under the Aged/Disabled Home and Community-Based Services Waiver (ADW) Program. The action described in the notification letter dated December 30, 2004 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29