



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 14, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 30, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue services under the Aged Disabled Waiver, A/DW ,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.

Eligibility for the A/DW program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who 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, where services can be provided. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b (11/1/03)].

The information which was submitted at your hearing revealed that at the time of the December 8, 2004 Pre-Admission Assessment, you did not meet the eligibility criteria for the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to uphold the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] PHSS - Boggess, BoSS - Keeney, WVMI

III. PARTICIPANTS:

Claimant's Witnesses:

_____, claimant

_____, Potomac Highlands Support Services

_____, Office Manager, _____ Community Care

_____, claimant's brother

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone

Nada Lind, Nurse WVMI by phone

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community Based Services Manual 570, 570.1, 570.1.a,b,c

D-2 Eligibility Determination dated January 5, 2005

D-3 Pre-Admission Screening, PAS, completed January 5, 2005

D-4 Denial letter dated March 11, 2005

D-5 Potential Denial letter dated February, 24, 2005

D-6 Eligibility Determination dated December 21, 2004

VII. FINDINGS OF FACT:

- 1) Claimant is a 45-year-old female who has primary diagnosis of Hypertension, CVA with left side weakness and Hi Cholesterol.
- 2) Ms. _____' A/DW eligibility was undergoing an annual evaluation on January 5, 2005. A Pre-Admission Screening (PAS) was completed in the home with the claimant and her homemaker present. This evaluation assigned only one (1) deficit and it was in the

area of incontinence of bladder. A level two (2) was assigned in the areas of Transferring and Walking. This indicates that Ms. _____ needs supervised/assistive device for these functions.

- 3) The areas in question raised at this hearing were in the claimant's ability to safely enter the bath due to some left side weakness, and her need for help when pulling up clothing items due to the left side weakness.
- 4) The claimant reported to the evaluating nurse that she is able to dress, bath and groom herself with no help.
- 5) The homemaker during the PAS reported that she mops, does dishes, laundry, dusts and cleans the bathroom.
- 6) Ms. _____ testified that she had been taking care of her own personal needs because she didn't know that the homemaker was suppose to be helping with them. She says she now lets the homemaker help her wash her hair and help wash her left side. She also lets her help some with dressing.
- 7) Mr. _____, the claimant's brother, voiced concerns about her inability to handle her own finances.
- 8) Ms. _____ is alone four days a week and gets in and out of her bath alone on those days and she walks in her home without the use of her cane. She uses her cane when she goes outside to get her mail.
- 9) Aged/Disabled Home and Community Based Services Manual § 570 – Program Eligibility for Client:

Applicants for the A/DW 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. The individual may be deinstitutionalized from a NF in any county of the state, or in another state as long as his permanent residence is in 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 DHHR office, or the SSA if an active SSI recipient.
 - E. Choose to participate in the A/DW Program as an alternative to NF 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 A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services 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 deficits on the PAS to qualify medically for the A/DW 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 capable of administering his/her own medication.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) deficits in order to qualify medically for the A/DW program benefits. Evidence and testimony provided at this hearing supports that this claimant was assessed correctly at having only one (1) deficit.
- 2) The PAS completed on December 21, 2004 correctly assigned one (1) deficit in item C. #26, of Chapter 570.1.b in the areas of continence. Testimony regarding the claimant's need for physical assistance in other areas was not convincing.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I am ruling that the claimant was accurately assessed. The concern of safety while entering the bath was presented as a strong issue however, I could not conclude from testimony that this claimant is not able to safely perform her bathing without assistance. My ruling is to **uphold** the Agency's actions to discontinue the 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

ENTERED this 14th Day of July, 2005.

**Sharon K. Yoho
State Hearing Officer**