



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 16, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 15, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Aged and Disabled Waiver case.

In arriving at a decision, the State Hearings 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 and Disabled Waiver services Program is based on current policy and regulations. Some of these regulations state as follows: 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. 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 ADW Program as an alternative to NF care. Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT).

The information submitted at your hearing revealed: You do not meet the continued medical eligibility criteria for Waiver Services.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to deny your Aged and Disabled Waiver case.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN – BoSS
Oretta Keeney, RN – WVMI
CWVAS

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

_____,

Claimant,

v.

Action Number: 05-BOR-6780

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

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on December 16, 2005 for Ms. _____. 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 scheduled on December 15, 2005 on a timely appeal filed November 19, 2005

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was not held between the parties and, Ms. _____ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver Services 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

_____, Son

██████████ Homemaker – Special Touch Nursing

Kay Ikerd, RN – Bureau of Senior Services (BoSS)

Sue Bailey, RN – West Virginia Medical Institute (WVMI)

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Does Ms. _____ meet the continued eligibility criteria for the Aged and Disabled Waiver Services Program?

V. APPLICABLE POLICY:

WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*
- D-2 PAS dated 09/20/05
- D-3 Letter of Potential Denial dated 09/21/05
- D-4 Termination Notice dated 10/06/05
- D-5 Scheduling Notice dated 11/14/05
- D-6 Memorandum with Hearing Exhibits dated 11/07/05
- D-7 Request For Hearing dated 10/11/05
- D-8 WVMI Appointment Letter dated 09/01/05
- D-9 Re-evaluation Request dated 08/22/05
- D-10 GroupWise Messages re: Scheduling

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) This issue involves the denial of continued services under the Aged and Disabled Waiver Services Program. The re-evaluation assessment was completed on September 20, 2005, (Exhibit D-2), for Ms. _____. Ms. _____' Primary Diagnoses were: COPD;

Emphysema; Osteoporosis; Macular Degeneration and; a stroke several years ago. Those present during the assessment were Ms. _____ and, Ms. Sue Bailey, R.N., of the West Virginia Medical Institute. According to Ms. Bailey's testimony, Ms. _____' daughter-in-law was in another room and did not want to participate in the assessment. Ms. Bailey determined that Ms. _____ had two (2) of the required five (5) deficiencies for continued services. The deficiencies were: Bathing and Grooming. It should be noted that the determination was based solely on a single days visit.

The West Virginia Medical Institute sent a letter of Potential Denial, (Exhibit D-3), to Ms. _____ on September 21, 2005. The letter stated there were two (2) deficits on the PAS. Ms. _____ was permitted to submit additional documentation within two weeks of the letter. Additional medical documentation was not received. WVMi issued a termination letter on October 6, 2005 (Exhibit D-4). Ms. _____ completed a Request for Hearing, (Exhibit D-7), on October 11, 2005.

2) The areas of disagreement between the parties were in the area of Dressing. Ms. _____ testified that contrary to her answers on September 20, 2005, she is unable to fasten buttons and snaps. Ms. Bailey referred to the Overall Comment Section of the PAS that stated in part,

She (Ms. _____) stated she was able to dress herself. She stated she is able to button and tie own shoes. Client was alert and oriented x 3 (Person, Place & Time), she even knew the president.

Ms. _____ does not receive a deficit for Dressing

3) At the hearing, Ms. Kay Ikerd, R.N., of the Bureau of Senior Services explained the Aged and Disabled Waiver Policy. There were no questions from the participants.

4) It should also be noted that representatives from the Central West Virginia Aging Services did not attend the scheduled hearing.

5) Aged/Disabled Home and Community Based Services Manual § 570 PROGRAM ELIGIBILITY FOR CLIENT:

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. 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 ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

6) Aged/Disabled Home and Community Based Services Manual § 570.1.a. - Purpose:

The purpose of the medical eligibility review is to ensure the following:

- * New applicants and existing clients are medically eligible based on current and accurate evaluations.
- * 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.
- * The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

7) 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 the following assessment elements on the PAS:

- A. #24: Decubitus - Stage 3 or 4
- #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.
- B. #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)
- C. #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.

D. #28: The individual is not (c) capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

1) The Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria states in part, "An individual must have five deficits on the PAS to qualify medically for the ADW Program."

2) Ms. _____ received a total of two (2) deficits on the PAS dated September 20, 2005. Ms. Sue Bailey's evaluation and the testimony of the participants, do not justify additional deficits for Dressing. Ms. _____ does not meet the medical criteria for continued services.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of December, 2005.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer