



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

Joe Manchin III
Governor

March 8, 2004

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 1, 2005. Your hearing request was based on the Department of Health and Human Resources denial of your application for 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 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 March 22, 2004 Pre-Admission Assessment, you did not meet the eligibility criteria for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the decision of the Agency to deny your application for benefits under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

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

cc: Chairman, Board of Review
WVMI
BoSS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

March 8, 2005

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 1, 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 March 1, 2005 on a timely appeal filed April 29, 2004.

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:

_____, Claimant
Debra LeMasters, WVMI
Kay Ikerd, BoSS (by phone from BoSS)

Presiding at the hearing was Sharon K. Yoho, 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 Agency was correct in their decision to deny eligibility for services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 570 & 590

March 8, 2005

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Departments= Exhibits:

Exhibit D-1 A/D waiver, Aged/Disabled Home and Community Based Services Manual ' 560.1- 570.1b
 Exhibit D-2 Eligibility Determination, dated March 22, 2004
 Exhibit D-3 Pre-Admission Screening (PAS)-2000 dated March 22, 2004
 Exhibit D-4 Letter of denial dated April 6, 2004

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) Claimant is a 52 year old male whose primary diagnosis is Chronic Obstructive Pulmonary Disease (COPD). At the time of the Pre-Admission Screening (PAS) he was on continuous oxygen for his COPD and also was using a nebulizer. He has a history of chronic Congestive Heart Failure and was hospitalized in 2003 for this condition. He has a seizure disorder that has been under control for the past five years and Spina Bifida which causes back pain.
- (2) The PAS, Pre-Admission Screening, was completed in the Claimant=s home on March 22, 2004. During this assessment, it was determined that the Claimant=s condition at that time revealed only one qualifying deficits. This deficit was for his inability to vacate in the event of an emergency.
- (3) The claimant agrees that he does not need assistance with his personal care. His gait is steady and he transfers without any assistance. He bathes independently but likes to have someone to be in his home during this time because he fears he may have a seizure while in the bath.
- (4) Mr. _____ was recently dropped from a community program which provided him with a housekeeper. He states that his most urgent need is for help with house cleaning. While he is able to take care of most of his daily personal needs, he is unable to accomplish house cleaning tasks due to his breathing problems.
- (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:
 C. Be approved as medically eligible for NF level care.
- (6) **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:
 B. Be a permanent resident of West Virginia. The individual may be de-institutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- (7) **Aged/Disabled Home and Community Based Services Manual ' 570.1.a. - Purpose:**
 The purpose of the medical eligibility review is to ensure the following:
 - (1) New applicants and existing clients are medically eligible based on current and accurate evaluations.
 - (2) 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.
 - (3) The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.
- (8) **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:

March 9, 2005

VII. Section Continued:

- 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. DECISION:

In order to qualify for Aged/Disabled Waiver services, an individual must be found to have at least five deficits at the time of the Pre-Admission Screening.

It has been determined that Mr. [REDACTED] at the time of the PAS, had only one deficit which was in the area of vacating in the event of an emergency. Testimony supports these findings and it was agreed that he is able to take care of his own personal needs. It is understood that the claimant does need some assistance in house cleaning however the Aged Disabled Waiver program is not the appropriate program to address this type of need. The claimant was referred to the Adult Service unit of the WV DHHR to obtain possible referrals to gain some assistance with house cleaning. The purpose of the Aged/Disabled Waiver program is to assist those individuals who would otherwise be placed in an intermediate or skilled nursing facility. It is clear that Mr. _____ would not be a candidate for such placement.

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the Agency=s actions to deny the application for benefits under the Aged/Disabled Title XIX (HCB) Waiver Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.