



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

Martha Yeager Walker
Secretary

May 30, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 2, 2006. 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 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 21, 2005 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** 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
██████ CCIL - Boggess, BoSS - ██████, WVMI

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

____,

Claimant,

v.

Action Number: 06-BOR-1075

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

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 2, 2006 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 2, 2006 on a timely appeal, filed February 3, 2006.

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 Waiver 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's Witnesses:

[REDACTED], claimant

[REDACTED], claimant's homemaker

[REDACTED], homemaker RN, Visiting Homemakers

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone

[REDACTED], WVMI nurse 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 Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §570**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

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

D-2 Pre-Admission Screening, PAS, completed December 21, 2005

D-3 Eligibility Determination dated December 21, 2005

D-4 Notice of potential denial dated January 4, 2006

D-5 Notice of termination dated January 26, 2006

Claimant's Exhibits:

C-1 Letter from [REDACTED], PhD, CRNP, dated January 6, 2006

VII. FINDINGS OF FACT:

- 1) Ms. ____ is a 77-year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on December 21, 2005.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant, her homemaker and her case manager participating. The evaluating nurse determined that the claimant had only four (4) qualifying deficits. She assigned a deficit for Ms. ____'s need for physical assistance in eating, bathing, grooming and dressing.

- 3) The claimant and her witnesses raised the issue of Ms. ____'s bladder incontinence.
- 4) The claimant stated to the nurse during the PAS, "I start peeing myself before I get there." The homemaker stated to the nurse, "she kind of knows when she's got to go, but if she's not there real fast, she will leak." The homemaker told the nurse that Ms. ____ is usually wet when she gets there in the morning, but that she does sometimes empty the bedside commode in the mornings. During the PAS the client and the homemaker agreed that she does sometime have control of her bladder.
- 5) Ms. ____ goes through three to four adult diapers per day. She testified that she begins to urinate as soon as her feet hit the floor. She sometimes will make it to the toilet to finish urination. She says that she never gets to the toilet and pulls down a dry diaper and pulls back up, a dry diaper.
- 6) Ms. [REDACTED] reports that Ms. ____'s diapers are really soaked when she helps her off with them. Ms. ____ has a bed pad under her at nights and it always has to be changed. She sits on a towel in chairs and leaks on it.
- 6) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)- Program Eligibility for client:

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

- C. Be approved as medically eligible for NF Level of Care.
- 7) Aged/Disabled Home and Community-Based Services Manual Section 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.
 - 8) Aged/Disabled Home and Community-Based Services Manual Section 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).

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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)

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 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. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMi nurse assigned the claimant four (4) qualifying deficits in the areas of eating, bathing, dressing and grooming.
- 2) The issue raised at the hearing was in the area of bladder incontinence. Policy stipulates that to be assigned a deficit for bladder incontinence the recipient must have no control

of bladder. While Ms. ____ does make it to the toilet occasionally to finish urinating, the information provided to the evaluating nurse during the PAS as well as testimony at the hearing clearly supports the fact that this claimant has no ability to hold her urine on the way to the toilet. She soaks three to four diapers per day and admits that she begins urinating as soon as her feet hit the floor. She never pulls down a dry diaper at the toilet. Being able to finish urination in a toilet does not prove that Ms. ____ has control of her bladder.

- 3) The claimant was determined by the nurse to be oriented and she exhibited clear rational behavior during the hearing. The ability or lack of ability, to control ones bladder, can best be determined by that person. This witness is found to be credible and therefore her testimony is determined to be reliable.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse should have assessed the claimant with five (5) deficits including one (1) for bladder incontinence. With the authority granted to me by the WV State Board of Review I am ruling to **reverse** the Agency's proposed action to discontinue this claimant's services under the Aged/Disabled Title XIX (HCB) Waiver program and that the Department assess the additional points for level of care associated with bladder incontinence.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of May 2006.

Sharon K. Yoho
State Hearing Officer