



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 24, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 15, 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 January 3, 2006 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under 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,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BOSS
CCIL

WVMI
Brown – Legal Aid of WV
Kalwar – Attorney General BMS

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

_____ **Claimant,**

v.

Action Number: 06-BOR-1208

**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 August 15, 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 August 15, 2006 on a timely appeal filed March 6, 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:

_____ - Claimant

Nan Brown – Attorney Legal Aid of WV

_____ – Case Manager Coordinating Council for Independent Living

_____ – Homemaker _____ County Committee on Aging

_____ – Claimant's Friend

_____ – Claimant's Sister

Department's Witnesses:

Kay Ikerd – Nurse Bureau of Senior Services by phone

Nasir Kalwar – Attorney with Attorney General's Office Bureau of Medical Services by phone

_____ - WVMI nurse by phone

Presiding at the Hearing was Melissa Hastings, 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 January 3, 2006

D-3 Notice of potential denial dated January 9, 2006

D-4 Notice of termination dated February 7, 2006

D-5 Letter from _____, MD dated January 10, 2006

Joint Exhibits:

J-1 Letter from _____ dated January 25, 2006

J-2 Letter from _____ dated February 3, 2006

Documents Not Submitted

Note from _____ dated August 15, 2006

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 53 year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on January 3, 2006.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant, homemaker, case manager and homemaker RN participating. The homemaker RN did not participate during the entire assessment. Was present at the end of the assessment and participated in the review of the PAS. The evaluating nurse determined that the claimant had only three (3) qualifying deficits. She assigned a deficit for Ms. _____'s need for physical assistance in bathing, grooming and dressing.
- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was schizophrenia, bipolar disorder and congestive heart failure.
- 4) Claimant's attorney contends that Ms. _____ should have been awarded deficits for decubitus, continence, orientation, transferring and inability to vacate a building.
- 5) Claimant's homemaker provides services 6 days per week, 5 hours Monday through Friday and 3 hours on Saturday.
- 6) The Pre-Admission Screening form page 2 of 4 item 24 (D2) indicates there was no decubitus present at the time of assessment. Page 1 of 5 item 20 of the Pre-Admission Screening form (D2) indicates that claimant has a yeast infection of the abdomen fold and skin care is being given to the area. It also notes that claimant's right leg was deep pink in color with no open areas. Testimony received from the evaluating nurse during this hearing indicates that she did not classify the yeast infection affecting the claimant's abdomen as a decubitus. The evaluating nurse inquired whether sterile dressings were required for the skin condition and was told no. Testimony from the evaluating nurse indicates that a stage 3 decubitus, which is required for a deficit, would be an open wound requiring daily sterile dressing changes. Evaluating nurse did not observe the area herself. _____'s letter dated January 10, 2006 (D5) makes note that skin care is needed to prevent further breakdown. A second letter dated January 25, 2006 (J1) from Dr. _____ indicates claimant has an open and bleeding area to groin that requires meticulous skin care due to DM to prevent further breakdown. A letter dated February 3, 2005 (J2) from Dr. _____, claimant's psychiatrist, indicates that claimant has been routinely treated for decubitus.
- 7) The Pre-Admission Screening form page 2 of 4 section 25e (D2) indicates that claimant was assessed as a level 2 Less than Total Incontinence. Evaluating nurse made this assessment based on claimant's statement that she changes pads 5 or 6 times per day and pads are not saturated with urine. Wears the pads for dribbling type incontinence. Knows when she has to go to the bathroom and uses a bedside commode at night. (D2 page 5 of 5) Letter from Dr. _____ dated January 10, 2006 (D5) indicates patient is incontinent of bladder. The Evaluation Request form completed by Dr. _____ on December 5, 2005 does not mention anything concerning continence.
- 8) The Pre-Admission Screening form page 2 of 4 section 25g (D2) indicates that claimant was assessed as a level 1 oriented. Evaluating nurse found claimant to be alert and

oriented times 3. Testimony received from the evaluating nurse indicates that she found claimant to be oriented to person, place and time. Claimant does have a diagnosis of schizophrenia and bipolar disorder. Testimony received from claimant's homemaker, friend and sister all confirm that claimant does have periods of disorientation and hallucinations that they have observed. Claimant is oriented enough to administer her own medications and insulin injections.

- 9) The Pre-Admission Screening form page 2 of 4 section 25j (D2) indicates that claimant was assessed as a level 2 Supervised/Assistive Device in the area of Transferring. Evaluating nurse made this assessment based on claimant's statement that she transfers herself in and out of her hospital bed, on and off bedside commode and bathroom toilet, on and off kitchen chair and in and out of lift chair. Testimony received from her long time homemaker indicates that she regularly assists claimant out of hospital bed as well as up and down from chair. Claimant's sister provides assistance to claimant every Sunday. She confirms that she assists claimant in getting out of hospital bed.
- 10) Testimony received from claimant's homemaker, friend and sister all indicate that claimant would be incapable of vacating a building when experiencing periods of disorientation and/or hallucinations.
- 11) 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.

- 12) 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.
- 13) 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 three (3) qualifying deficits in the areas of bathing, dressing and grooming.
- 2) The issues raised at the hearing were in the areas of Decubitus, Continence, Orientation, Transferring and Ability to Vacate a Building.

- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on January 3, 2006.
- 4) Evidence and testimony admitted during this hearing reveal that in the contested area of Decubitus, claimant does have a diagnosis indicating that she has this condition. Policy requires a stage 3 decubitus be present for the evaluating nurse to award a deficit. Her primary care physician does not identify claimant's skin condition as decubitus but does describe an open, bleeding area in the groin. There was no testimony offered to indicate that any kind of sterile dressings were required to treat the wound. Under item 26 on the PAS there is an indication that professional care is needed for skin care but no sterile dressings are noted. Uncontested testimony of the evaluating nurse describes a stage 3 decubitus as a very deep, gaping hole requiring sterile dressings at least daily or more often. A finding can be made that claimant does suffer from decubitus but there was no conclusive evidence offered to show that the decubitus was at a stage 3 level.
- 5) Evidence and testimony admitted during this hearing confirm that the assessment of a level 2 Less than Total Incontinence was appropriately assigned by the evaluating nurse. There was no documentary evidence admitted or testimony offered indicating claimant had total urinary incontinence. Claimant's statements to the evaluating nurse indicate incontinence exists but is not total.
- 6) Evidence and testimony admitted during this hearing reveal that in the contested area of Orientation, claimant suffers periods of disorientation, hallucinations and bizarre behavior due to her medically diagnosed condition of Schizophrenia and Bipolar Disorder. The evaluating nurse found claimant to be oriented to person, place and time during her assessment and assigned a level 1 Oriented to the claimant. Based on the testimony and documentary evidence offered in this case, a Level 2 Intermittent Disoriented is determined to be the more appropriate assessment of this claimant. A Level 3 Totally disoriented/comatose is required to receive a deficit.
- 7) Evidence and testimony admitted during this hearing reveal that in the contested area of Transferring that claimant needs a one person assist at times. Policy states that to receive a deficit in this area, the claimant must be assessed at a level 3 one person assist in the home but does not quantify it by indicating that this assistance must be given at all times. As a result, a deficit is awarded to the claimant in the contested area of transferring as it was clearly demonstrated during this hearing that at times claimant cannot transfer on her own and does require the assistance of one other person to enable her to get out of her hospital bed.
- 8) The Ability to vacate a building category was appropriately determined based on policy requiring a level 3 assessment in walking and/or a level 3 assessment in orientation. Orientation was the only item contested by the claimant. A level 2 intermittent disorientation was determined to be the appropriate assessment for this claimant. The issue of Walking was not contested during this hearing.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, the Hearing Officer finds that the evaluating nurse assessed the claimant with three (3) deficits in the areas of Bathing, Dressing and Grooming appropriately. In addition, testimony and evidence admitted during this hearing reveal that one additional deficit should be awarded for transferring. This results in a total deficit award of four (4) deficits. Policy requires five (5) deficits to be eligible for services under the Aged/Disabled Waiver Program. The department's proposed action to terminate services through the Aged/Disabled Policy is upheld.

X. The RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of August 2006.

**Melissa Hastings
State Hearing Officer**