



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

June 15, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 7, 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 9, 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,

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

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] CWVAS - Boggess, BoSS - [REDACTED], WVM

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

____,

Claimant,

v.

Action Number: 06-BOR-1270

**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 June 7, 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 June 7, 2006 on a timely appeal, filed February 24, 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, by speakerphone

_____, Case Manager, Central WV Aging Services

_____, claimant's friend, by speakerphone

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by speakerphone

_____, WVMI nurse by speakerphone

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 January 9, 2006

D-3 Eligibility Determination dated January 9, 2006

D-4 Notice of potential denial dated January 18, 2006

D-5 Notice of termination dated February 13, 2006

Claimant's Exhibits:

C-1 Letter from Dr. _____ dated January 27, 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 January 9, 2006.
- 2) The claimant has primary diagnosis of DMII, Depression, Hypertension, Gastro Esophageal Reflux Disease and Arthritis.
- 3) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant and her current homemaker, _____, on

January 9, 2006. 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 dressing, grooming, walking and vacating.

- 4) The issues addressed by the claimant's witnesses were in the areas of bathing.
- 5) During the PAS evaluation, the claimant reported to the nurse the manner in which she gets into her shower. She said, "I roll this up to the shower stool and I hold to this bar and the shower thing and hold onto the thing. Sometimes I have a great deal of trouble and right now, I am having trouble. I don't do it when I'm here by myself." She advised the nurse that she did not require hands on assistance with transfers. The nurse asked Ms. ____ if the homemaker must assist her with getting in and out of the tub/shower, and she told the nurse that she did not. The nurse asked if the homemaker must hold on to her to transfer into the tub/shower. Ms. ____ said, "Not so far."
- 6) The PAS indicated that Ms. ____ is at a level one in orientation. There is no indication that she is intermittently disoriented.
- 7) Ms. ____ testified at the hearing that her homemaker steadies her while she gets out of the chair to the shower and back. She states, "She puts one arm around my waste and pivots me around."
- 8) Ms. ____ testified that Ms. ____ couldn't take a shower unless someone is there. Ms. ____ used to be her homemaker and she says that she had to help her in the shower.
- 8) 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.
- 9) 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.

10) 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 WVMJ nurse assigned the claimant only four (4) qualifying deficits in the areas of dressing, grooming, walking and vacating.
- 2) The issue raised at the hearing was in the areas of bathing. It could not be concluded by testimony and evidence that this claimant does need hands on assistance with transferring in and out of the tub/shower. Information provided to the nurse by the claimant and her current homemaker during the assessment greatly conflict with testimony given at the hearing by the claimant and a past homemaker. When the claimant was saying she needed no help getting in and out of the tub, it is unreasonable to believe that her current homemaker would not have advised the evaluating nurse that she puts her arm around the claimant's waste and pivots her around to the tub. The current homemaker was not present for this hearing. This hearing officer questions the credibility of the claimant's testimony regarding transferring to the tub/shower. Her testimony was in direct contrast to the documentation on the PAS. She was scored with a level one (1) in orientation therefore; confusion can be ruled out.
- 3) This claimant is not medically eligible for the AD/W program. She is not in need of the level of care provided in a nursing facility.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse correctly assessed the claimant with four (4) qualifying deficits at the PAS. With the authority granted to me by the WV State Board of Review, I am ruling to **uphold** the Agency's proposed action to discontinue this claimant's services under the Aged/Disabled Title XIX (HCB) Waiver program

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th Day of June 2006.

**Sharon K. Yoho
State Hearing Officer**