



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

August 28, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 24, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to deny eligibility for 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 November 14, 2005 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 deny medical eligibility for 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
Boggess, BoSS
[REDACTED], WVM

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

_____ ,

Claimant,

v.

Action Number: 06-BOR-1461

**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 24, 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 24, 2006 on a timely appeal, filed March 22, 2006.

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
_____, claimant's daughter
_____, claimant's sister

Department's Witnesses:

Connie Tetrick, Bureau of Senior Services
_____, WVMI

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

All participants appeared by speakerphone through Leader Phone Conferencing.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in their decision to deny 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 November 14, 2005
- D-3 Eligibility Determination dated November 14, 2005
- D-4 Notice of potential denial dated December 13, 2005
- D-5 Notice of termination dated December 30, 2005

Claimant's Exhibits:

- C-1 Request for hearing signed March 10, 2006 with attached letter

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 65-year-old female. She applied for services under the Aged Disabled Waiver Program, which prompted a Pre Admission Screening (PAS) to be completed by a WV Medical Institute nurse on November 14, 2005. This evaluation was completed with the claimant and her sister _____ present. Ms. _____ is providing necessary care for Ms. _____.

- 2) Ms. _____ has primary diagnosis of Mild Cognitive Disorder with Permanent Stimulation Loss.
- 3) This PAS determined that Ms. _____ had two (2) qualifying deficits. These deficits were in the areas of bathing and grooming.
- 4) The claimant's witnesses raised issues regarding vacating, eating, orientation and dressing.
- 5) Ms. _____ has a very short attention span and she is disoriented upon waking. Her daughter raised concerns regarding her ability to vacate in the event of a fire. Ms. _____ is able to walk unassisted.
- 6) The claimant has problems with choking on any kind of meat. She is prescribed a medication spray to spray under her tongue to prevent choking. She can cut up her own food, but she does not understand the need to cut her meat in very small pieces. For this reason, her sister or daughter cut her meats for her.
- 7) Ms. _____ has difficulty with orientation especially when she is taken out of her home. She does not know where she is and gets confused. She is comfortable and only intermittently oriented in her own home. She experiences short-term memory loss due to a head injury.
- 8) The claimant's right shoulder is described, by her daughter, to be a floating shoulder. Due to an injury to the shoulder, she is not able to raise her right arm very high. For this reason, she needs assistance with putting on her bra. She also needs help with putting on socks due to her excessive weight.
- 10) 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.
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- 11) 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.

12) 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 only two (2) qualifying deficits in the areas of grooming and bathing.
- 2) The issue raised at the hearing were in the areas of vacating, eating, orientation and dressing. It could not be concluded by testimony and evidence that this claimant needs hands on assistance inside the home with eating. She does need close supervision to ensure that she cuts her meats up in small pieces. She is not totally disoriented to person, place and time. She has more difficulty outside of the home with orientation, but policy stipulates that the PAS is an assessment of the client's abilities in the home. Since she is not at a level three (3) for walking or for orientation, policy will not permit a deficit for vacating. Testimony did support that the claimant does need hands on assistance for dressing. Due to limitations of her right shoulder and excessive weight, she needs help from others with dressing.
- 3) A deficit assigned for dressing would only increase her deficits to three (3) and this not enough to satisfy the policy requirements. 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 should have assessed the claimant with three (3) qualifying deficits at the PAS. The decision of medical ineligibility however was correct. With the authority granted to me by the WV State Board of Review, I am ruling to **uphold** the Agency's proposed action to deny 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 28th Day of August 2006.

**Sharon K. Yoho
State Hearing Officer**