



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 3, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 8, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through 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 continue to 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. [Aged/Disabled (HCB) Services Manual 570-570.1b (11/1/03)].

The information which was submitted at your hearing reveals that your medical condition continues to require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
WVMI
BoSS
CCIL
Kelly Ambrose, Esq., Assistant AG's Office
Nan Brown, Esq., Legal Aid of WV

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

_____,

Claimant,

v.

Action Number: 05-BOR-5621

**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 January 3, 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 December 8, 2005 on a timely appeal filed May 2, 2005.

It should be noted here that the Claimant's benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending a hearing decision.

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
Nan Brown, Esq., Legal Aid of WV
[REDACTED] Homemaker
[REDACTED], CM, Northwood Mental Health Services
[REDACTED], Homemaker RN, WV Choice
[REDACTED] CM, CCIL
Kelly Ambrose, Esq., Assistant AG's Office (by phone)
[REDACTED], RN, WVMI (by phone)
Kay Ikerd, RN, BoSS (by phone)

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Claimant continues to be medically eligible for participation in the Medicaid, Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 560 & 570.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

BMS-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
BMS-2 Medical Assessment, PAS-2000, completed on March 7, 2005
BMS-3 Notice of Potential Denial from WVMI dated March 14, 2005
BMS-4 Additional information sent to WVMI
BMS-5 Notice of Termination/Denial dated April 14, 2005

VII. FINDINGS OF FACT:

- 1) On May 7, 2005, the Claimant was reevaluated (medically assessed) by West Virginia Medical Institute (WVMI) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW, and to confirm the appropriate Level of Care.

- 2) The medical assessment (exhibit BMS-2) completed by WVMI determined that the Claimant is no longer medically eligible to participate in the ADW Program, and on March 14, 2005, the Claimant was notified of a Potential Denial (exhibit BMS-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations. Based on your PAS you have deficiencies in only 2 areas – Dressing and Continence.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

- 3) In accordance with the provisions afforded in the Potential Denial Notice, additional medical information, exhibit BMS-4, was submitted within the allowed 2 week period and reviewed by WVMI. [REDACTED] testified that the additional information failed to establish any additional deficits.
- 4) On April 14, 2005, the Department sent the Claimant a Termination/Denial Notice (exhibit BMS-5). This notice includes some of the following pertinent information:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate / deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 2 areas – Dressing and Continence.

- 5) In addition to the 2 deficits noted in the notification letter, exhibit BMS-2 reveals that the Claimant presents a primary diagnosis of IDDM (Insulin Dependent Diabetes Mellitus) and stroke hemiplegia.
- 6) Testimony offered by and on behalf of the Claimant reveals that the Claimant has minimal use of her left arm and hand resulting from a stroke. As a result, the Claimant is unable to cut up her own food (Level II - physical assistance required eating). This finding is consistent with information reported by the Claimant on the day of her assessment.
- 7) The Claimant cannot open prescription medication containers or draw her own insulin as she is unable to grasp items with her left hand. The Claimant is therefore physically unable to administer her own medications.
- 8) The Claimant demonstrated a limited range of motion in her left arm and she is unable to grasp with her left hand. This evidence supports testimony that the Claimant is unable to shave herself, cut her toenails or wash and groom her hair (Level II – physical assistance is required in grooming).

9) 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 of care.

10) Aged/Disabled Home and Community Based Services Manual § 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 ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

11) 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:

- 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 – (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.
- E. #28: The individual is not (c) capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) A medical assessment was completed on the Claimant to determine continued medical eligibility for participation in the Aged/Disabled Waiver Program on March 7, 2005.
- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 3) The March 7, 2005 medical assessment completed by WVMi recognized two (2) program qualifying deficits – Dressing and Continence.
- 4) Evidence submitted at the hearing identified three (3) additional deficits – The Claimant is unable to administer her own medications (+1), she requires level II (physical assistance) with eating (+1) and grooming (+1).
- 5) Whereas the Claimant exhibits deficits in five (5) of the specific categories of nursing services, the Claimant’s continued medical eligibility for participation in the Aged & Disabled Waiver Services Program is therefore established.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of January 2006.

Thomas E. Arnett
State Hearing Officer