



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 23, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 3, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) 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 Aged/Disabled Home and Community Based Services Waiver (ADW) Program is based on current policy and regulations. Some of these regulations state as follows: An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of assessment elements on the PAS. (Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003)

The information which was submitted at your hearing revealed that you do not meet the medical criteria for the ADW Program.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Libby Boggess, BoSS
_____, WVMI
_____, Americare

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

_____,

Claimant.

v.

Action Number: 05-BOR-6021

**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 November 3, 2005 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 November 3, 2005 on a timely appeal, filed June 17, 2005.

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 Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

_____, Claimant
_____, CM, Americare
_____, Homemaker
_____, Neighbor
Kay Ikerd, RN. BoSS (By Telephone)
_____, RN, WVMI (By Telephone)

Presiding at the hearing was Margaret M. Mann, 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 claimant continues to meet the medical requirements needed to receive ADW services.

V. APPLICABLE POLICY:

Sections 570, 570.1, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Sections 570, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003
- D-2 PAS-2000 dated 04/19/2005 and additional information submitted dated 04/25/05
- D-3 Potential Denial Letter dated 04/21/2005
- D-4 Termination Notice dated 06/02/2005

Claimants' Exhibits:

- C-1 Recording Log dated 04/25/05

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of ADW services.
- 2) A review of medical eligibility was completed on 04/19/2005. Four deficits were found. The deficits found were physical assistance with eating, bathing, grooming and dressing. (D-2)

- 3) The claimant was notified of potential case closure in a letter dated 04/21/2005. (D-3) A letter of termination was issued 06/02/2005. (D-4) The claimant requested a hearing on this issue.
- 4) The claimant disagrees with the finding that the claimant is mentally able to vacate the building in the event of an emergency with supervision, medication administration and bladder incontinence.
- 5) The Health Assessment on the PAS-2000 shows PMH-DM, Depression, HTN, Parkinsons, Hyperlipidemia, CHF. The testimony from Ms. [REDACTED] revealed that the claimant was independent with transferring and walking. She observed that the claimant did not have to hold on to any doorways or furniture while walking in the room. The claimant did not show any hesitancy about following directions. Ms. [REDACTED] determined she would only need supervision when exiting the building with someone to tell her where to go out.
- 6) Testimony from Ms. _____ revealed that the claimant does not know how to read, use the telephone, doesn't get her mail, doesn't know what her medication is or how to count money. She wouldn't know how to get out of the house unless somebody was there to help her. The claimant doesn't understand why she is at the hearing. Ms. _____ sets up the claimant's medication for her. Ms. _____ reports a past diagnosis of mental retardation.
- 7) Testimony from Ms. [REDACTED] revealed that the claimant does not make it to the bathroom two or three times a week. Documentation on the PAS-2000 reads "Client reports she sometimes will wet her pants when she goes to the bathroom. Client reports in a weeks times she would have an accident on herself about twice a week".
- 8) Section 570 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

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

- A. Be 18 years of age or older.
 - B. Be a permanent resident of West Virginia.
 - C. Be approved as medically eligible for NF Level of Care.
 - D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
 - E. Choose to participate in the ADW Program as an alternative to NF care.
- 9) Section 570.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

- 10) Section 570.1.a of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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 level of care (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) Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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)
 - Contenance - Level 3 or higher (must be incontinent)
 - Orientation - Level 3 or higher (totally disoriented, comatose)
 - Transfer - Level 3 or higher (one person or two persons 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. #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: Individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) An individual must have five deficits on the PAS-2000 to qualify medically for the ADW Program. These deficits are determined from a combination of elements on the PAS-2000.
- 2) Four deficits were established at the time of the PAS review on 04/19/05. Those were physical assistance with eating, bathing, dressing and grooming.
- 3) Testimony received on behalf of the claimant does not clearly demonstrate any changes to the conclusions reached by the Department.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does not meet the medical criteria for the ADW Program. The Department is upheld in the decision to terminate the claimant's benefits under the Aged/Disabled Home and Community-Based Services Waiver (ADW) Program. The action described in the notification letter dated June 2, 2005 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd Day of January, 2006.

**Margaret M. Mann
State Hearing Officer**