



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 25, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 20, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under 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 revealed that your medical condition no longer requires 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 **uphold** 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

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

_____,

Claimant,

v.

Action Number: 05-BOR-6504

**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 25, 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 20, 2005 on a timely appeal, filed August 8, 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
_____, Claimant's daughter
_____, RN, Homemaker RN
_____, CM, CCIL
_____, 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 services under the 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:

- D-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
- D-2 Medical Assessment, PAS-2000, completed on 6/23/05
- D-3 Notice of Potential Denial dated 6/29/05
- D-3a Correspondence from _____ dated 7/5/05 (received by WVMI on 7/13/05)
- D-4 Notice of Termination/Denial dated 12/23/05

VII. FINDINGS OF FACT:

- 1) On June 23, 2005, the Claimant was reevaluated by WVMI (medically assessed) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW.

- 2) The medical assessment (exhibit D-2) completed by WVMI determined that the Claimant is no longer medically eligible to participate in the ADW Program, and on June 29, 2005, a notice of Potential Denial (exhibit D-3), was sent to the Claimant. 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 3 areas – bathing, grooming and continence.

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

This notice advises the Claimant that additional medical information will be considered if submitted within the next two weeks. Additional information was received within the allotted 2-weeks period and has been identified as exhibit D-3a.

- 3) A termination notice (exhibit D-4) was sent to the Claimant on July 26, 2005. 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 3 areas – bathing, grooming and continence.

- 4) The Claimant is contesting the findings on the PAS, specific to medical eligibility, in the areas of eating, dressing, orientation, medication administration and vacating the building in the event of an emergency. Exhibit D-3a challenges findings in walking.
- 5) Testimony received in support of a deficit in vacating in the event of an emergency includes concerns regarding the Claimant's coherence when awakened in the night and confronted with an emergency. The potential for a falls was also noted. Evidence presented by the Department indicates that the Claimant was assessed as needing prompting and supervision to vacate in an emergency. The Claimant was oriented at the time of the visit, she does not require physical assistance to transfer or ambulate, her gait was steady and she has not suffered a fall in the last two years. Further testimony reveals that the Claimant lives on the ground floor of her apartment complex and a fire exit is located close to her apartment. Based on the evidence, a deficit cannot be established in vacating.

- 6) Testimony received at the hearing reveals that the Claimant's ability to dress independently is "difficult" due to a bad elbow. However, there was no testimony to indicate that the Claimant requires physical assistance with dressing. While the homemaker reported during the assessment that she sometimes helps the Claimant with her shoes and socks, the Claimant dresses herself on the weekends and changes clothing independently when the homemaker is not present during the day. A deficit in dressing cannot be established.
- 7) The Claimant is physically able to feed herself but she is unable to prepare her own meals. Meal preparation, however, only counts as a deficit in eating if the individual requires food to be purée. Because there is no evidence to indicate the Claimant requires this level of meal preparation, a deficit in eating cannot be established.
- 8) In addition to the areas contested at the hearing, the Claimant's ability to walk is challenged in exhibit D-3a, and is based on a previous stress fracture in the Claimant's foot. This exhibit indicates that the Claimant "has to limit her walking." While the Department's assessment confirms that the Claimant has difficulty walking (level-2 supervision / assistive device), the evidence confirms that the Claimant does not require physical assistance with walking. A deficit in walking cannot be established.
- 9) ██████████, Homemaker RN, testified that it is her opinion that the PAS is incorrect in the areas of orientation and medication administration. Ms. ██████████ testified that the Claimant has been experiencing some intermittent disorientation. These episodes of intermittent disorientation, according to Ms. ██████████, have necessitated a change in medication administration from "independent" to "prompting and supervision." While Ms. ██████████'s testimony is credible, it should be noted that neither of the functional levels described by Ms. ██████████ (intermittent disorientation or medication administration requiring prompting and supervision) meet the criteria of deficit.
- 10) The Claimant testified that her condition has deteriorated since the medical assessment, however, medical eligibility can only be determined based on the Claimant's medical condition at the time of the evaluation.
- 11) 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.

12) 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.

13) Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria:

An individual must have five (5) 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 June 23, 2005.
- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 3) The medical assessment completed by WVMI reveals that the Claimant demonstrated three (3) program qualifying deficits – bathing, grooming and continence.
- 4) The evidence submitted on behalf of the Claimant fails to establish any additional deficits.
- 5) Whereas the Claimant exhibited 3-deficits in the specific categories of nursing services, continued medical eligibility for the Aged & Disabled Waiver Services Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal 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 25th Day of January, 2006.

**Thomas E. Arnett
State Hearing Officer**