



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
January 13, 2006

Martha Yeager Walker
Secretary

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 16, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue your benefits/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.

Medicaid, Aged/Disabled (HCB) Title XIX Waiver is granted to those individuals who continue to meet all eligibility requirements. 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. In order to medically qualify for Aged/Disabled Waiver services an individual must have a total of five (5) qualifying deficits in specific categories of nursing services. [Aged/Disabled (HCB) Services Manual § 570- 570.1b (11/1/03)].

The information submitted at your hearing established 5 qualifying deficits therefore demonstrating that you continue to require the level of care commonly provided in a nursing facility.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to discontinue your medical and service benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the August 19, 2005 notification letter.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Boggess, Bureau of Senior Services
[REDACTED], West Virginia Medical Institute
[REDACTED], Central WV Aging Services
[REDACTED], Legal Aid of West Virginia

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

Claimant

v.

Action Number 05-BOR- 6551

**West Virginia Department of Health and Human Resources,
Respondent.**

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 11, 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 November 16, 2005 on a timely appeal filed August 30, 2005 and received by the State Hearings Examiner September 23, 2005.

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

_____, CM, Central WV Aaging Services

_____, RN, Companion Care

_____, homemaker

_____, Legal aid of WV

Kay Ikerd, RN, Bureau of Senior Services (by phone)

_____, RN, West Virginia Medical Institute (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION 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 § 570- 570.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1- A/D Waiver Manual § 560.1- 570.1.b

E-2- Notification, 8/19/05 (Termination)

E-3- Notification 8/3/05 (Potential Denial)

E-4- WVMI Independent Review (PAS) 7/08/05

VII. FINDINGS OF FACT:

1) The claimant's A/D Waiver case was due for an annual review and a WVMI Independent Review (E-4) was completed by the WVMI on July 8, 2005. WVMI determined that the claimant was no longer medically eligible for Waiver services.

2) The agency mailed the claimant a notification of potential closure August 3. A termination notification was subsequently mailed to the claimant August 19, 2005. This termination notice stated that only 4 of the required 5 deficits were met- vacating a building, bathing, grooming and dressing.

3) A hearing request dated August 25, 2005 was received by BMS August 30, 2005 and by this examiner September 23, 2005. The claimant was notified of the hearing date of November 16, in a scheduling letter dated September 26, 2005. This hearing was convened as scheduled. Benefits have been continued pending a hearing decision.

- 4) During the hearing, Exhibits as noted in Section VI above were presented.
- 5) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.
- 6) The agency acknowledged by way of the testimony of the WVMi nurse and the evaluation of July 20, 2005 four (4) qualifying deficits: *vacating, bathing, dressing and grooming*.
- 7) Testimony by and on behalf of the claimant revealed that she is 88 years of age. She has continence problems daily. She wears continence pads night and day. She is unable to set up medication. The extent of her participation in *medication administration* involves taking dosage from the daily container and ingesting it.
- 8) The Aged/Disabled Home and Community Based Services Manual § 580.2.b states in part: All clients must be evaluated at least annually in order to confirm their medical eligibility for continued services and to establish the LOC (level of Care) they require.
- 9) The Aged/Disabled Home and Community Based Services Manual § 570 reveals that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care.
- 10) The 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 assessment elements on the medical evaluation- Decubitus - Stage 3 or 4; in the event of an emergency, the individual ability to vacate a building; functional abilities of individual in the home (eating, bathing, grooming, dressing, continence, orientation, transferring, walking, wheeling); skilled needs; and ability to self-administer medication.
* In the category of incontinence, the standard to establish occasional from total incontinence is determined by frequency- less than 3 times per week being occasional and more than 3 being total.

VIII. CONCLUSIONS OF LAW:

- 1) Continuing eligibility for the Medicaid Aged and Disabled Waiver Program is determined based on an annual assessment of the individual's functional ability in a number of designated elements pertaining to the activities of daily living. Evidence reveals that such an evaluation was completed by the West Virginia Medical institute on July 8, 2005.
- 2) Individuals medically eligible for the ADW program must meet the same criteria as those individuals medically eligible for a nursing facility level of care. This entails a finding that the individual possesses a specified number of functional deficits in designated activities of daily living. The evaluation completed July 8, 2005 found the claimant required a nursing level of care in 4 categories - vacating a building, bathing, dressing and grooming.

3) The following elements are considered in the eligibility assessment: Decubitus, the individual's ability to vacate a building in an emergency, functional abilities of individual in the home (eating, bathing, grooming, dressing, continence, orientation, transferring, walking, wheeling); skilled needs; and ability to self-administer medication. Evidence offered during the hearing, established significant functional limitation in the claimant's ability to self-medicate. She is unable to determine dosages or set up her medication. Additionally, she is bladder incontinent on a daily basis. These factors create 2 additional qualifying deficits.

4) A minimum of five specified deficits, of a nursing care level, must be established for an individual to qualify medically for the ADW Program. The agency acknowledged 4 qualifying deficits and evidence established 2 additional deficits (medication administration and continence) for a total of 6.

IX. DECISION:

The agency's determination as set forth in the August 19, 2005 notification is **reversed**. The claimant continues to qualify medically for participation in the Medicaid Aged and Disabled Waiver Program.

In the absence of any policy or official directive clarifying the medication administration issue, I find the claimant's needs in this category exceed "prompting and supervision" as the agency alleged and are more appropriately characterized as "not capable of administering" which is a fully qualifying deficit.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 13th Day of January, 2006.

Ron Anglin
State Hearing Examiner

CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION
For
Public Assistance Hearings,
Administrative Disqualification Hearings, and
Child Support Enforcement Hearings

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.