



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of Inspector General

Board of Review

235 Barrett Street
Grafton WV 26354

May 8, 2006

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 24, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for 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 failed to establish 5 qualifying deficits therefore demonstrating that you do not currently require the *level of care* commonly provided in a nursing facility.

It is the decision of the State Hearing Officer to **uphold** the action of the agency to deny your application for benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the October 4, 2005 notification letter.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Boggess, BoSS
[REDACTED] WVMI

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

_____ /
Claimant

Action Number 05-BOR- 7012

v.

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 Examiner resulting from a fair hearing concluded on May 8, 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 April 24, 2006 on a timely appeal requested November 18, 2005 and received by the State Hearings Examiner February 24, 2006.

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

_____, Mountain Cap.

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 is 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- WVMI Independent Review (PAS) 7/19/05

E-3- Notification 7/28/05 (Potential Denial)

E-4- Notification, 10/4/05 (Termination/Denial)

C-1- Statement from Dr _____, 8/17/05

C-2- Statement from _____, 1/23/06

VII. FINDINGS OF FACT:

1) The claimant applied for Medicaid, Aged and Disabled Waiver services and a medical evaluation was completed by WVMI (E-2) on July 19, 2005. WVMI determined that the claimant was not medically eligible for Waiver services and a notification of potential denial was mailed July 28. A termination/denial notice was then mailed to the claimant October 4, 2005. This notice noted that only one of the required 5 deficits were met-contenance.

2) A hearing request dated November 18, 2005 was received by the Bureau of Medical Services (BMS) November 29, 2005 and by this Hearings Examiner February 24, 2006. The claimant was notified of the hearing date of April 24, 2006 and a hearing was convened on that date.

3) During the hearing, Exhibits as noted in Section VI above were presented.

4) Testimony was heard from the individuals listed in section III above. All persons giving testimony were placed under oath.

5) The agency acknowledged by way of the testimony of the WVMI nurse and the evaluation of 7/19/05 only one qualifying deficit- continence.

6) Exhibit C-1 from Dr [REDACTED] states in part: "In my opinion, she would have trouble exiting her house in the event of a fire. She needs help bathing, dressing, and grooming. She has had frequent emergency room visits. She has no transport to the doctor or pharmacy, and she needs prompting to take her medications."

7) Testimony reveals the claimant is 63 years of age and receives SSI. She must sit to cook meals. Needs some assistance with bathing and grooming. Needs help in housekeeping and chore tasks.

8) 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.

9) 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.

VIII. CONCLUSIONS OF LAW:

1) Policy relating to the Aged/Disabled Home and Community Based Services program directs that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care. Evidence reveals that a medical evaluation was completed by the West Virginia Medical Institute on July 19,

2005. This evaluation found only one qualifying deficit in the category of Contenance.

2) Policy provides that an individual must have a minimum of five deficits to qualify medically for the ADW Program. These deficits those set forth in section VII (9) above. The agency credited the claimant with 1 qualifying deficit - contenance. Testimony and evidence indicated some degree of deficit in several other categories e.g. grooming, dressing and bathing. Little supportive evidence was provided to convincingly establish any of these as qualifying deficits and their inclusion would fail to provide the required 5 deficits in any case.

IX. DECISION:

The agency's determination as set forth in the October 4, 2005 notification is **upheld**.

The agency acknowledged 1 qualifying deficit. Evidence offered failed to substantiate any additional functional limitations rising to the level of qualifying deficits. Because many of the claimant's needs were identified as of a housekeeping or chore nature, application for services under the Personal Care Services program is advised.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 8th Day of May, 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.