



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 16, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 14, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Aged/Disabled (HCB) Title XIX Waiver Services 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 Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who 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 where services can be provided. [Aged/Disabled (HCB) Services Manual Sections 570- 570.1b].

Information submitted at your hearing revealed that you continue to meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CWVAS

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

_____,

Claimant,

v.

Action Number: 05-BOR-7123

**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 March 16, 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 convened on March 14, 2006 on a timely appeal filed December 9, 2005. The hearing was originally scheduled for February 2, 2006, but was rescheduled due to inclement weather.

II. PROGRAM PURPOSE:

The program entitled Aged/Disabled Waiver 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:

[REDACTED], Claimant
[REDACTED], Case Manager, CWVAS
[REDACTED], Homemaker, CWVAS
[REDACTED], Hanshaw, RN, CWVAS
[REDACTED], RN, WVMI (participating telephonically)
Kay Ikerd, RN, BoSS (participating telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 Agency was correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 570
- D-2 Pre-Admission Screening (PAS) 2000 assessment completed on October 25, 2005
- D-3 Notice of Potential Denial dated November 2, 2005
- D-4 Notice of Denial dated November 29, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing a reevaluation to determine continued medical eligibility.
- 2) West Virginia Medical Institute (WVMI) completed a medical assessment (D-2) on October 25, 2005 and determined that the Claimant is not medically eligible to participate in the ADW Program.
- 3) WVMI sent a Notice of Potential Denial (D-3) on November 2, 2005, advising the Claimant that she had two weeks to submit additional medical information.
- 4) On November 29, 2005, a denial notice (D-4) was sent to the Claimant.

5) ██████ reviewed the PAS 2000 (D-2) and testified that she established three deficits for the Claimant in the areas of physical assistance with bathing, dressing and grooming.

6) The Claimant contended that additional deficits should be awarded in the following areas:

Bladder incontinence- The Claimant testified that she was incontinent of bladder almost every night at the time the PAS was completed. In addition, she testified that she had bladder repair surgery which had helped correct her incontinence to an extent, but the condition has since worsened and she is now completely incontinent.

██████ testified that the Claimant had admitted having occasional stress incontinence, which she and Ms. Ikerd contend is different than total incontinence. The Claimant testified that she did not recall stating that her incontinence was stress incontinence. She stated that “occasionally,” to her, means incontinence four or five times per week, although she was not incontinent every time she voided urine at the time the PAS was completed.

Inability to vacate the building in the event of an emergency- The Claimant, who suffers from multiple sclerosis (MS), testified that there are times when she is unable to get out of bed during a severe MS attack. Because of the unpredictable nature of her disease on a day-to-day basis, the Claimant believes there are times when she would be unable to vacate her residence unassisted in the event of an emergency.

██████ testified that the Claimant ambulated and transferred independently on the date of the assessment and indicated that she could vacate her apartment independently on that date. PAS nursing comments indicate that the Claimant had admitted that she may be unable to vacate if she was having a bad day.

Orientation- Ms. _____ reported that she has memory problems. She was, however, rated as having intermittent disorientation on the PAS.

Eating- Ms. _____ indicated that she often needs help preparing meals, however, meal preparation is not considered under physical assistance with eating, according to Ms. Ikerd.

Ms. _____ also reported that she experiences numbness/paralysis in one leg on certain days and suffers from major depression.

7) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)- Program Eligibility for client:

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

C. Be approved as medically eligible for NF Level of Care.

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

- 9) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW 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 B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.
- E. #28: The individual is not capable of administering his/her own medication.

VIII. CONCLUSIONS OF LAW:

- 1) As a result of testimony presented during the hearing, one (1) additional deficit is awarded in the area of bladder incontinence. While there was dispute concerning what type of incontinence the Claimant had reported during the assessment, the Claimant testified that she was having incontinence almost every night at the time the assessment was completed.
- 2) One (1) additional deficit is awarded in the area of inability to vacate the building in the event of an emergency. The Claimant testified that the unpredictable nature of her illness can greatly impact her physical abilities from day to day. It is reasonable to believe that the Claimant would not always be able to vacate without assistance in the event of an emergency.
- 3) The awarding of two (2) additional deficits brings the Claimant's total number of deficits to five (5). Therefore, the required five (5) deficits are established to satisfy medical eligibility requirements for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's 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 16th Day of March, 2005.

**Pamela L. Hinzman
State Hearing Officer**