



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 5, 2006

_____ for

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 29, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services received through 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 reveals that your medical condition continues to require 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 **reverse** 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
CCS

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

_____,

Claimant,

v.

Action Number: 05-BOR-7125

**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 May 5, 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 March 29, 2006 on a timely appeal filed December 9, 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's Daughter (MPOA)
_____, Claimant's Son-in-law
_____, Claimant's Daughter-in-law
_____, Claimant's Granddaughter
_____, RN, Homemaker RN, _____ Committee on Aging
_____, CM, CCS
_____, RN, WVMI (by phone)
Brian Holstine, LSW, 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 benefits and services provided through the Medicaid, 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 October 26, 2005
- D-3 Notice of Potential Denial from WVMI dated 11/2/05
- D-3a Correspondence from _____ dated 11/9/05.
- D-4 Notice of Termination/Denial dated 12/1/05

Claimant's Exhibits:

- C-1 Packet of documents submitted into evidence - numbered 1 through 7.

VII. FINDINGS OF FACT:

- 1) On October 26, 2005, the Claimant was reevaluated (medically assessed) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW, and to confirm the appropriate Level of Care.
- 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.

- 3) On November 2, 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 2 areas – Vacate a Building and Bathing.

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

The Claimant was notified that she could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final decision was made. Additional documentation was received and has been identified as exhibit D-3a.

- 4) A termination notice (exhibit D-4) was sent to the Claimant on December 1, 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 2 areas – Vacate a Building & Bathing.

- 5) Representatives testifying on behalf of the Claimant contend that she should have been awarded deficits in dressing, grooming, walking, transferring, medication administration and orientation.
- 6) Evidence received in support of a deficit in dressing fails to meet policy requirements. While there are concerns about the Claimant's ability to choose and retrieve appropriate clothing, she is able to dress with prompting and supervision. Based on the evidence, a deficit cannot be awarded in dressing.
- 7) Testimony received at the hearing reveals that the Claimant is able to wash and comb her own hair but that she chooses to let the homemaker complete these tasks for her. However, because the Claimant gets her toenails clipped by a doctor, she is clearly unable to complete all tasks related to grooming. A deficit is therefore awarded in grooming (+1).

- 8) The documentation found in the PAS indicates that the Claimant uses a walker, the walls or furniture to assist her in walking, and although the WVMI RN noted that the homemaker held on to the Claimant when she ambulated during the assessment, it was her judgment that physical assistance was not required.

Evidence reveals that the Claimant was involved in an accident in January 2005 that resulted in severe injuries to her legs. She has lost some of the feeling in her legs and she has experienced several bad falls. Because of the Claimant's noted frail physical condition, shortness of breath and history of falls, it is evident that physical assistance is required when walking. This finding is also consistent with the Department's finding that the Claimant is physically unable vacate in the event of an emergency. A deficit is therefore awarded in walking (+1).

- 9) There is insufficient evidence to demonstrate the Claimant required physical assistance in transferring at the time of the assessment. While testimony received on this issue indicates that the Claimant requires physical assistance with transferring now, the evidence indicates that the Claimant was able to transfer with supervision/assistive device at the time of the medical assessment. A deficit cannot be awarded in transferring.

- 10) The medical assessment reveals that the Claimant is able to administer her own medications with prompting and supervision, however, credible testimony received at the hearing reveals that because the Claimant's medication was often found laying around and on the floor, medication has to be placed in her hand. Based on this evidence, the Claimant is unable to administer her own medications and a deficit is therefore established (+1).

- 11) Policy found in Chapter 508.2 reveals that an individual can only qualify for a deficit in orientation if they are totally disoriented to time and place. The evidence submitted on the Claimant's behalf fails to meet this standard as the Claimant is always oriented to her home (place). The Claimant has been correctly assessed as intermittent disoriented and a deficit in orientation cannot be awarded.

- 12) 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.

13) 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.

14) 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 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 October 26, 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 demonstrates two (2) program qualifying deficits – Vacate a Building and Bathing.
- 4) Evidence submitted at the hearing identified three (3) additional deficits – Grooming, Walking and she is unable to administer her own medications.
- 5) Whereas the Claimant exhibits deficits in five (5) of the specific categories of nursing services, the Claimant’s continued medical eligibility for participation in the Aged & Disabled Waiver Services Program is therefore established.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency 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 5th Day of May, 2006.

**Thomas E. Arnett
State Hearing Officer**