



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 20, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 7, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue services under the Aged Disabled Waiver, A/DW, 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 A/DW 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 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 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the November 15, 2005 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
██████, PHSS - Boggess, BoSS - ██████, WVMI

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

_____,

Claimant,

v.

Action Number: 05-BOR-7240

**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 7, 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 7, 2006 on a timely appeal, filed January 3, 2006.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

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:

Claimant's Witnesses:

_____, claimant

_____, homemaker

_____, Case Manager Potomac Highlands Support Services

_____, Commission on Aging

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone

_____, WVMI nurse

Presiding at the Hearing was Sharon K. Yoho, 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 Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §570**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §570, 570.1 a,b.

D-2 Pre-Admission Screening, PAS, completed November 15, 2005

D-3 Eligibility Determination dated November 15, 2005

D-4 Notice of potential denial dated December 8, 2005

D-5 Notice of termination dated December 29, 2005

Claimant's Exhibits:

C-1 Emergency room report dated December 20, 2005

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 75-year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on November 15, 2005.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with only the claimant present. The evaluating nurse determined

that the claimant had only four (4) qualifying deficits. She assigned a deficit for Ms. _____'s need for physical assistance in bathing, grooming, dressing and eating.

- 3) Issues addressed by the claimant's witnesses were in the areas of ambulating and wheeling.
- 4) The claimant demonstrated to the evaluating nurse that she could ambulate using her walker and advised that she used the walker for most ambulation in her home. Ms. _____ told the nurse, during the assessment, that both of her feet were numb and that her balance was poor but that she was able to ambulate in her home. Ms. _____ testified at the hearing that she is again losing the use of her right knee and is now using her wheelchair almost all the time in the home. She required three months physical therapy in the year 2004 to regain the use of her right knee.
- 5) Ms. _____ testified that she has fallen three times in her apartment during the year 2005.
- 6) Witnesses for the claimant indicate that her condition has worsened since the November PAS. She has lost most use of her left hand and her right knee is again giving away on her. Ms. [REDACTED] testified that the claimant is developing gout in her feet.
- 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).

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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)

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 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. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMi nurse assigned the claimant only four (4) qualifying deficits in the areas of bathing, dressing, eating and grooming.
- 2) The issues raised at the hearing were in the areas of ambulating and wheeling. The WVMi nurse observed Ms. _____ ambulate using her walker during the assessment.

The claimant advised the nurse that she mainly used the walker to ambulate. Testimony indicates that the claimant now uses her wheelchair most of the time and that the condition of both her right leg and her hands has worsened. Policy stipulates that the claimant must be assessed based on her condition at the time of the PAS. This later deterioration cannot be taken into consideration in this decision.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse accurately assessed the claimant with four (4) qualifying deficits at the PAS. With the authority granted to me by the WV State Board of Review I am further ruling to **uphold** the Agency's proposed action to discontinue this claimant's services under the Aged/Disabled Title XIX (HCB) Waiver program.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 20th Day of March 2006.

Sharon K. Yoho
State Hearing Officer