



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Ave.
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 1, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 13, 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 does not 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 **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
_____, WVMI
Libby Boggess, BoSS
_____, MountainHeart

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

____,

Claimant,

v.

Action Number: 06-BOR-872

**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 April 13, 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 13, 2006 on a timely appeal filed January 18, 2006.

It should be noted here that the claimant's benefits 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:

[REDACTED], Claimant
[REDACTED], Your Choice Home Care Services
[REDACTED], RN, WVMi (By phone)
Brian Holstine, LSW, BoSS (By phone)

Presiding at the Hearing was Margaret M. Mann, 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 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-2005, completed on November 14, 2005 and additional statement submitted 12/20/05
- D-3 Notice of Potential Denial from WVMi dated 12/09/05
- D-4 Notice of Termination/Denial Notice dated 01/09/06

Claimant's Exhibits:

- C-1 Letter from ____ dated 04/04/06

VII. FINDINGS OF FACT:

- 1) On November 14, 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. The claimant and [REDACTED] of Your Choice Home Care Services were present during the assessment.
- 2) The medical assessment (D-2) completed by WVMi determined that the claimant is no longer medically eligible to participate in the ADW Program.

- 3) On December 9, 2005, a notice of Potential Denial (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 0 areas.

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. No additional documentation was received.

- 4) A termination notice (D-4) was sent to the claimant on January 9, 2006. 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 0 areas.

- 5) The claimant was 81 years of age at the time of the assessment. Her primary diagnosis was congestive heart failure. Secondary diagnoses were listed as: hypertension, osteoporosis, anxiety, pacemaker, and cardiac dysrhythmia.
- 6) Testimony from Ms. [REDACTED] revealed that the claimant was able to cut meat for eating. The claimant reported getting in and out of the shower independently and bathes herself. She reported sometimes using the shower chair and other times stood up to wash. She did state there were times she did not feel like showering and would take a sponge bath. Under dressing, the claimant admitted that she did get assistance from the homemaker to dress occasionally but did admit she dressed herself on weekends. Under grooming, the client stated she was able to shampoo her hair, clean her teeth, file her fingernails and was able to cut her toenails. Under bladder continence, the claimant stated she did wear pads for occasional bladder incontinence but told Ms. [REDACTED] she did get to the bathroom to void. The claimant denied any bowel incontinence. The claimant reported being oriented at all times. The claimant was observed to push down on the sofa to get up on her feet and used her walker to ambulate. The claimant reported not using the wheelchair in the home. There were no professional/technical needs noted. The claimant is independently able to take her medication. The claimant did not meet the criteria for ability to vacate in the event of an emergency.

- 7) Testimony from the claimant revealed she needs someone to shop for food. After she bathes herself, she needs to take rest. She needs someone to transport her to doctor's appointments. Her homemaker does not help her dress.
- 8) Testimony from Ms. [REDACTED] revealed that the homemaker stated she had to assist the claimant with her bath several times in the past week.
- 9) The claimant had a letter from her son. (C-1) It reads in part "She (his mother) is alone with no support, unable to go to the grocery store or to the doctors, walk the long distance to do laundry, take out the trash, lift heavy objects such as a gallon container of water, and other physically demanding activities. Occasionally, she may need help taking a shower.....Mother is mentally aware, able to communicate clearly, conscientious to pay her bills, take her medication, make her doctor appointments, and perform minimal self-care and food preparation."

10) 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.

11) 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.

12) 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, Alzheimer's, 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) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 2) The medical assessment completed by WVMi reveals that the claimant demonstrates no program qualifying deficits.
- 3) Testimony and evidence received from and on behalf of the claimant does not clearly demonstrate any changes to the conclusions reached by the Department during the assessment completed on November 14, 2005.
- 4) Whereas the claimant exhibits no deficits in the specific categories of nursing services, the claimant's continued medical eligibility for participation in the Aged &Disabled Waiver Services Program is not established.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate the claimant's benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program. The action described in the notification letter dated January 9, 2006 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of June, 2006.

**Margaret M. Mann
State Hearing Officer**