



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 22, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 3, 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 Boggett, BoSS
_____, All Care Home & Community Services, Inc.

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

____,

Claimant,

v.

Action Number: 06-BOR-897

**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 3, 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 May 3, 2006 on a timely appeal filed January 19, 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], Case Manager, All Care Home & Community Services, Inc.
[REDACTED], RN, McDowell County Commission on Aging
[REDACTED], RN, WVMI (By Telephone)
Brian Holstine, LSW, BoSS (By Telephone)

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 December 6, 2005 and statement from Dr. Jones dated 12/19/05
- D-3 Notice of Potential Denial from WVMI dated 12/13/05
- D-4 Notice of Termination/Denial Notice dated 01/11/06

VII. FINDINGS OF FACT:

- 1) On December 6, 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. Those present for the assessment were the claimant and his homemaker, [REDACTED]. Ms. [REDACTED] did not stay for the entire visit.
- 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 13, 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 4 areas. The areas in which deficiencies were found - Eating, Bathing, Grooming and Dressing.

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

The claimant was notified that he could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final decision was made. Additional information was received but made no difference to the above determination.

- 4) A termination notice (D-4) was sent to the claimant on January 11, 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 4 areas. The areas noted – Eating, Bathing, Grooming, and Dressing.

- 5) The claimant was 53 years of age at the time of the assessment. His primary diagnosis is hemiplegia to the right side.
- 6) Ms. [REDACTED] discussed her findings for transferring/walking. She had found the claimant needs supervision or an assistive device for transferring/walking. The PAS-2005 reads in part “Client then ambulated in the living room of the home over to his television. Client held to the television as he ambulated. Client has hemiplegia to the right side and had difficulty moving the right leg. I was ready to assist client because I thought he was going to fall. Client started leaning forward as he ambulated. Client said this is how he has to move when he ambulates because of the right side of his body. Client says that he is unsteady frequently and falls in the home. [REDACTED] says “My feet get tangled up because I forget to lift that leg sometimes.” Client says that when [REDACTED] is in the home that she assists him with transferring and ambulating. [REDACTED] is in the home 4 hours daily. When [REDACTED] is unavailable, client does not have assistance in the home. Client has a cane, but says that he tries not to use it because he doesn’t want to become dependent on it. Denies having a walker and wheelchair.” (D-2) Based on this information, the claimant was assessed as needing supervision/assistive device for transferring and walking because he does have to do this in his home when no one is present.
- 7) Ms. [REDACTED] discussed her findings for bladder/bowel incontinence. The assessment reads in part: “Client says that he has occasional accidents with bladder. Client says if he

cannot get to the bedpan that he may urinate on himself. Client uses bedpan to void. Client says that if he has to have a bowel movement that he goes to the bathroom and uses the toilet.” (D-2) Because the accidents with the bladder do not occur all of the time, the claimant was assessed as having less than total bladder incontinence. He was assessed as having no incontinence of the bowel.

- 8) It is noted on the assessment that “Client says that his HM sets up his medications in a weekly pill organizer. Client says that HM brings his medication to him daily when she is in the home. When HM is unavailable, client says that he gets the medication out of the organizer himself. I noticed there were two pills lying on an end table in the home. Client says that was his pain medication that he takes if needed today. Client says that he is forgetful and forgets to take his medication at times.” (D-2) Because the medication did not have to be placed in the client’s hand at all times and he is able to get the medication out of his organizer, Ms. [REDACTED] stated the claimant was assessed as being able to administer his medication.
- 9) The claimant disagrees with the findings for walking and medication administration. Why did the nurse (Ms. [REDACTED]) have to catch him if he could walk? She grabbed his arm. He attempts to take his medication on the weekends.
- 10) The statement submitted by Dr. [REDACTED] 12/19/05 reads in part that “My patient _____ suffers from hemiplegia second to injuries sustained in an automobile accident. He has deficits in his ability to walk and balance.” (D-2)
- 11) Testimony from Ms. [REDACTED] revealed it is felt the claimant should receive a point for walking. If the claimant only ambulates while falling as he ambulates, isn’t the claimant being punished because he is trying to be independent? He is doing it because he has to.
- 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 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 WVM I reveals that the claimant demonstrates four (4) program qualifying deficits.

- 3) The claimant disagreed with findings for medication administration and walking.
- 4) Policy reads as follows for (1) transferring: Level 3 or higher (one person or two person assist in the home). (2) walking: Level 3 or higher (one person assist in the home). Testimony and evidence presented at the hearing revealed that the homemaker is in the home four hours daily. The claimant is alone the rest of the time. The claimant used furniture and demonstrated for the nurse that he could ambulate with supervision or assistive device in his home. No deficit can be assessed for transferring or walking.
- 5) In order to receive a deficit for medication administration policy reads that 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 some one other than the recipient at all times. Testimony and evidence revealed that the claimant does administer his medications some of the time. No deficit can be assessed for medication administration.
- 6) Whereas the claimant exhibits only four 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 11, 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 22nd Day of June, 2006.

**Margaret M. Mann
State Hearing Officer**