



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 9, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 18, 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
[REDACTED], WVMI
[REDACTED], MountainHeart

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

____,

Claimant,

v.

Action Number: 06-BOR-950

**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 18, 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 18, 2006 on a timely appeal filed January 23, 2006. It should be noted that this hearing was originally scheduled for April 13, 2006. The claimant's case manager could not be present that day and the hearing was rescheduled for April 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:

It should be noted that this hearing was held by conference call.

_____, Claimant
_____, Case Manager, MountainHeart Community Services
_____, RN, WVMI
Brian Holstine, LSW, BoSS

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 22, 2005
- D-3 Notice of Potential Denial from WVMI dated 12/29/05
- D-4 Notice of Termination/Denial Notice dated 01/17/06

VII. FINDINGS OF FACT:

- 1) On December 22, 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 was the only person present for 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 29, 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. No additional documentation was received.

- 4) A termination notice (D-4) was sent to the claimant on January 17, 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 diagnoses are insulin dependent diabetes, congestive heart failure, coronary artery disease, bipolar disorder, and hypothyroidism. Other medical conditions are renal failure, status post kidney transplant and gout.
- 6) Testimony from Ms. [REDACTED] revealed that she documented during the assessment that when it comes to bladder incontinence, the claimant does have accidents on himself. The claimant did note at times he does make it to the bathroom. He notes he does dribble at times. When it comes to his bowels, client notes at times he thinks he has gas when in fact he has a liquid bowel movement. Most of the time, he is able to make it to the bathroom with his bowels.
- 7) The claimant disagrees with the findings for vacating, bladder/bowel incontinence and medication administration. Testimony from the claimant revealed that his COPD limits his walking in relation to vacating in the event of an emergency. He has no one to help him get to the bathroom. He does have accidents with his bladder while sitting in his chair. He lives by himself and has no one to administer his medication. He has to do that himself. He feels his independence is being taken away.
- 8) It is noted on the PAS-2005 (D-2) that the claimant was alert and oriented during the assessment. He noted that when his blood sugars are up his memory is not as good. When it comes to transferring, client notes he uses his cane to help him get up. When it

comes to walking he notes he does hold onto his cane and at times holds onto the furniture as he is walking. He does use an electric wheelchair when he goes outside to the mailbox and he does have to sit in a wheelchair to do his shopping.

9) 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.

10) 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.

11) 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 four (4) program qualifying deficits.
- 3) The claimant disagreed with findings for vacating, bladder/bowel incontinence, and medication administration.
- 4) Policy reads as follows when determining the client's ability 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. The claimant does not meet the criteria as he is able to ambulate in his home by using his cane or furniture to move about. No deficit can be assessed for vacating.
- 5) In order to receive a deficit for bladder/bowel incontinence, an individual must be total incontinent. This is defined as when the recipient has no control of bowel or bladder functions at any time. Testimony and evidence presented at the hearing documented that the claimant does have accidents but he is also able to make it to the bathroom at times. No deficit can be assessed for incontinence of bladder/bowel.
- 6) Testimony revealed that the claimant does administer his medications. No deficit can be assessed for medication administration.
- 7) 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 17, 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 9th Day of June, 2006.

Margaret M. Mann
State Hearing Officer