



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

July 20, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 23, 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 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,

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

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

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

,
Claimant,

v. Action Number: 06-BOR-983

**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 June 30, 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 June 23, 2006 on a timely appeal filed January 26, 2006. This hearing was originally scheduled for May 19, 2006. It was rescheduled at the request of the claimant to June 23, 2006. It should be noted that the hearing record was left open until June 30, 2006 in order for the claimant's closing argument to be submitted.

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:

██████████, Claimant
██████████, Paralegal, Legal Aid of West Virginia

Claimant's Witnesses:

██████████, Case Manager, Central West Virginia Aging Services, Inc.
██████████ Direct Care Worker, West Virginia's Choice

██████████, RN, WVMI (By Telephone)
Cathie Suspan, RN, 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 12, 2005
- D-3 Notice of Potential Denial from WVMI dated 12/19/05
- D-4 Statement from Dr. ██████████ dated 12/28/05
- D-5 Notice of Termination/Denial Notice dated 01/17/06

Claimant's Exhibits:

- C-1 Statement from Dr. ██████████ dated 06/12/06
- C-2 Closing Statement dated 06/23/06

VII. FINDINGS OF FACT:

- 1) On December 12, 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, her case manager [REDACTED], and her daughter, _____.
- 2) The medical assessment (D-2) completed by WVMJ determined that the claimant is no longer medically eligible to participate in the ADW Program.
- 3) On December 19, 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 she could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final decision was made. A statement was submitted by Dr. [REDACTED] of the Robert C. Byrd Clinic December 28, 2005. (D-4) This new information did not change the above finding.

- 4) A termination notice (D-5) 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 73 years of age at the time of the assessment. Primary diagnosis: chronic atrial fibrillation. Secondary diagnoses: COPD, DM II, S/P right mastectomy with right extremity lymphadema, anticoagulation therapy, depression and hyperlipidemia. It is noted on the assessment “Severe lymphadema is noted, right arm. There is 2+ pitting edema, both ankles. Pedal pulses are weak bilaterally. Hand grips are equal but weak. Client raises her right arm, but is unable to raise the left. (D-2)

- 6) The claimant disagrees with the findings for transferring, orientation and vacating.
- 7) The claimant was assessed as level 2 – supervised/assistive device for transferring. Ms. ██████ noted on the assessment “Nurse observes as client gets up by pushing down on sofa. She ambulates holding to her surroundings.” (D-2) Testimony from Ms. ██████ revealed she observed the claimant pushing down on the sofa and getting up on her feet. She did show she was able to push down with her hand and get herself up on her feet. She used both arms but used mainly the left arm. Then she ambulated holding to her surroundings like the wall and table. She didn’t use her cane or walker; she used the things she could hold on to in order to ambulate.
- 8) It was noted that Ms. ██████’ right arm was considerably swollen, red and inflamed. Testimony from Ms. ██████ revealed that this is the normal condition of her right arm. She can hardly lift her arm above her head because of lymphadema. Use of the arm aggravates the swelling, stiffness and pain.
- 9) Testimony from Ms. ██████ revealed that the claimant’s orientation has declined over the years she has been her case manager. There are times she is not aware of what is going on and doesn’t know people she should know. The claimant lives in a secured building on the ground floor where you buzz the claimant to get her to let you into her apartment. She has never let Ms. ██████ in. Ms. ██████ stated that she either gets in the apartment by already being in the building visiting another client and then going to Ms. ██████’ apartment or by calling the claimant’s daughter who then goes to her mother’s apartment and lets her in. The daughter let’s her mother know she is there by rapping on her mother’s apartment window. In her opinion, the claimant would have trouble getting out of her apartment in the event of an emergency. There has been an incident when she did not know who Ms. ██████ was.
- 10) Testimony from Ms. ██████ revealed that on the day Ms. ██████ did the assessment, the claimant did push herself off of the chair. With the condition her arm is in, there are times the claimant does need assistance getting off of a chair. She has observed her needing help getting off of a couch and bed.
- 11) Ms. ██████ has been the claimant’s homemaker since January. She works five days a week. She has observed her having the same clothes on from one day to the next. The condition of her arm varies. When she helps the claimant off of a chair, commode or bed, the arm appears to be more inflamed when she uses it more. The claimant has never related to her that she has fell but she has seen bruises. The claimant’s orientation appears to be worse. She has to get into the claimant’s apartment by the maintenance man letting her in. She does not feel she could get out of the apartment in the event of an emergency. She was not the claimant’s homemaker at the time of the assessment.
- 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 WVMH reveals that the claimant demonstrates four (4) program qualifying deficits.
- 3) The claimant disagreed with findings for transferring, orientation and ability to vacate.
- 4) The State Hearing Officer is convinced by the testimony of the case manager that the claimant does need one person assistance with transferring.
- 5) In order to receive a deficit for orientation, the individual must be a Level 3 or higher (totally disoriented, comatose). The testimony at the hearing does not support a finding that the claimant is totally disoriented.
- 6) In order to receive a deficit for being mentally unable to vacate, the individual must be 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). Level 3 under orientation is "totally disoriented". The testimony and evidence does not support a finding that the claimant is totally disoriented. There is no diagnosis of dementia.
- 7) In order to receive a deficit for being physically unable to vacate, a person is physically unable at all times at Level 3 (one person assistance) or higher in walking. The testimony and evidence presented at the hearing does not support a finding that the claimant needs one person assistance with walking at all times.
- 8) There were four deficits found on the medical assessment. As a result of the evidence and testimony revealed at the hearing, there was an additional deficit found for transferring.
- 9) Whereas the claimant exhibits 5 (five) deficits in the specific categories of nursing services, the claimant's continued medical eligibility for participation in the Aged & Disabled Waiver Services Program is established.

IX. DECISION:

It is the decision of the State Hearing Officer to reverse 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 not be taken. The case will be reviewed as policy dictates.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of July, 2006.

**Margaret M. Mann
State Hearing Officer**