



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

October 19, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 26, 2007. Your hearing request was based on the Department of Health and Human Resources' denial of services under the Aged Disabled Waiver, ADW, 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 ADW 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 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the June 25, 2007 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 action of the Department to deny 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
Kay Ikerd, BoSS
[REDACTED] Power of Attorney

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



Claimant,

v.

Action Number: 07-BOR-1851

**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 September 26, 2007 for [REDACTED] on a timely appeal filed August 1, 2007. 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.

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:

[REDACTED] claimant
[REDACTED] claimant's son
[REDACTED] claimant's son

claimant's daughter-in-law
claimant's caregiver
Case Manager,

Department's Witnesses:
Kay Ikerd, Bureau of Senior Services
, 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 deny medical eligibility for services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §500**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1** Aged/Disabled Home and Community based Services Manual §503 thru 503.4
- D-2** Pre-Admission Screening, PAS, completed June 25, 2007
- D-3** Eligibility Determination dated June 25, 2007
- D-4** Notice of potential denial dated June 29, 2007
- D-5** Notice of denial dated July 29, 2007

VII. FINDINGS OF FACT:

- 1)** This claimant is an 87-year-old female whose application for Aged Disabled waiver service was denied due to medical eligibility not met.
- 2)** The claimant has primary diagnosis of Congestive Heart Failure, Pulm Fibrosis, Dermatonyositis related to Muscular Dystrophy, Hypothyroidism and Hypertension.
- 3)** A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on June 25, 2007 with the claimant, her son, her daughter-in-law and case manager present. The nurse determined from the answers given to her by the participants that two qualifying deficits could be assessed. Those qualifying deficits were in the areas of vacating and grooming.

- 4) During testimony, the Department conceded to a deficit in bladder incontinence to make the total deficits assessed to be three.
- 5) The issues introduced by the claimant and her witnesses were in the areas of decubitus, bathing, dressing, orientation and medication administration.
- 6) At the time of the assessment, the claimant was not bed bound or wheel chair bound which is usually what causes a decubitus. The claimant had a rash on parts of her body and one of the areas was on her buttocks.
- 7) The claimant told the nurse during the assessment that she takes her shower most of the time on her own. She told the nurse that girl from hospice was coming for one hour a day three days a week but she did not wait on her to help her with her shower. She says if the girl is early, she will let her help with the shower but that, she is really not needed. The claimant has a walk in shower and uses a shower chair. She uses a shower brush to wash her own back. She reported that she could wash her own feet and her own hair.
- 8) The claimant is able to dress herself, but does need others to supervise to insure that she does not put on soiled clothing and that her clothing is appropriate. She advised the nurse at the assessment that she could put on her own bra, pants, underwear, shoes, socks, and hose and could button her own clothing.
- 9) The claimant gets confused at times and uses poor judgment when handling her financial affairs. She was able to tell the nurse the date the year and she knew where she lives. The nurse noted that the claimant has periods of fogginess.
- 10) The claimant is able to take her own medication. She does need close supervision to insure that she takes the proper medication and the proper dosage. Her medication is set up for her and others remind her of when to take the medication.
- 11) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

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.

- 12) Aged Disabled Home and Community-Based Services Manual Section 503.1: MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the ADW Program.

- 13) Aged Disabled Home and Community-Based Services Manual Section 503.1.1 PURPOSE:

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW 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.

**14) Aged Disabled Home and Community-Based Services Manual Section 503.2
MEDICAL CRITERIA:**

An individual must have five deficits on the Pre-Admission Screening Form (PAS), to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

#24 Decubitus; Stage 3 or 4

#25 In the event of an emergency, the individual is c) mentally unable to vacate or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits.

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

- a. Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- b. Bathing ----- Level 2 or higher (physical assistance or more)
- c. Grooming--- Level 2 or higher (physical assistance or more)
- d. Dressing ---- Level 2 or higher (physical assistance or more)
- e. Continence-- Level 3 or higher; must be incontinent
bowel
- f. Continence-- Level 3 or higher; must be incontinent
bladder
- g. Orientation-- Level 3 or higher (totally disoriented, comatose)
- h. Transfer----- Level 3 or higher (one person or two person assist in the home)
- i. Walking----- Level 3 or higher (one person assist in the home)
- j. 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)

#27 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.

#28 The individual is not capable of administering his/her own medications.

- 15) Aged Disabled Home and Community-Based Services Manual Section 503.4
MEDICAL REEVALUATION:
Annual reevaluations for medical necessity for each ADW member must be conducted.

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, determine that the claimant had two qualifying deficits in the areas of vacating and grooming. The Department conceded to a deficit in bladder incontinence during the hearing.
- 2) Evidence and testimony provided for this hearing did not support deficits in the areas of decubitus as the rash described is not considered a decubitus. Testimony regarding bathing, dressing and medicating reveals that the claimant is able to perform those tasks without hands on assistance and only has a need for supervision and reminders. Policy in 503.2 is clear that in order to receive a deficit for these three areas, the claimant must require physical assistance and be unable to do the task on her own. The claimant was oriented and only has some confusion. Policy in 503.2 states that the person must be totally disoriented or comatose to be assessed a deficit for orientation.
- 3) The Department was correct in their assessment of two qualifying deficits at the time of the PAS and their conceding to one additional for bladder incontinence. They have demonstrated that the claimant does not need the level of care provided in a Long Term Care facility and therefore is not eligible for the Waiver program services.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was correct in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **uphold** the Department's action to deny this claimant 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 19th Day of October 2007.

**Sharon K. Yoho
State Hearing Officer**