



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

November 15, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 7, 2007. Your hearing request was based on the Department of Health and Human Resources' proposed termination 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 July 16, 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 terminate 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], WVMI

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

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Claimant,

v.

Action Number: 07-BOR-2052

**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 November 7, 2007 for █ on a timely appeal filed August 31, 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]
[REDACTED], SW, [REDACTED]
[REDACTED],
[REDACTED], Case Manager, [REDACTED]

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone
[REDACTED], WVMI nurse, by speakerphone

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 discontinue 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 July 16, 2007
- D-3 Eligibility Determination dated July 16, 2007
- D-4 Notice of potential denial dated August 1, 2007
- D-5 Notice of denial dated August 17, 2007

Claimant's Exhibits:

- C-1 Letter from Dr. [REDACTED] dated August 22, 2007
- C-2 Letter from Dr. [REDACTED] dated September 14, 2007

VII. FINDINGS OF FACT:

- 1) This claimant is a 47-year-old female whose Aged Disabled waiver case was undergoing a re-evaluation in July 2007.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on July 16, 2007 with the claimant. The claimant's sister was present at the end of the evaluation. The nurse reviewed the assessment with the sister

and the claimant present. The nurse determined from the answers given to her by the claimant and her sister that only two qualifying deficits could be awarded. Those qualifying deficits were in the areas of bathing and incontinence of bladder.

- 3) The issues introduced by the claimant and her witnesses were in the areas of dressing, grooming and medicating.
- 4) The claimant and her sister advised the evaluating nurse during the PAS that she needs help with picking out clothing to wear. Testimony by witnesses indicates that the claimant would leave soiled clothing on for too long if not instructed to put clean clothing on. The claimant also needs supervision to ensure that appropriate clothing is worn. She has been found outside of her home with a robe on with nothing on under it. The claimant does not need hands on assistance to actually put her clothing on. She does need prompting and supervision.
- 5) Others help the claimant wash her hair because if they didn't, she might go for days and not wash her hair. The claimant advised the evaluating nurse that she can wash her own hair in the tub or shower. At the time of the PAS the claimant had not had a homemaker for a month or so. She told the nurse that when she had a homemaker, the homemaker would wash her hair for her in the sink.
- 6) The claimant fills her weekly pill box herself, but needs someone to remind her to take her medication and to supervise to make sure she takes the correct medication.
- 7) Exhibits C-1 and C-2, letters from doctors confirm that the in home care that the claimant has been receiving have benefited her greatly. Her personal hygiene is better and she has benefited from close monitoring of her medication.
- 8) 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.

- 9) 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.

- 10) 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.

11) 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.

12) 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 only two qualifying deficits in the areas of bathing and incontinence.
- 2) Evidence and testimony provided for this hearing did not support deficits in the functional areas of dressing and grooming. Policy specifies that hands on assistance must be needed in order to be assigned a deficit in these areas. The claimant does not need hands on assistance with dressing she does however need supervision and prompting. She told the nurse during the PAS that she could wash her own hair, but had let the homemaker do it for her when the homemaker was coming. The claimant does require prompting and supervision to ensure that she does wash her hair. No other grooming issues were addressed.
- 3) The claimant does need close supervision in the area of medication administration. She does however; fill her own pill box and takes her medication without hands on assistance from others. Others do need to check her pill box and remind her to take the proper dosages.
- 4) Policy 503 (C) states that the applicant must be medically eligible for Nursing Facility level of care. The Department was correct in their determination that this claimant does not require the level of care received in a Nursing Facility. Although it is clear that the in home services provided to this claimant have been beneficial, the assessment of two qualifying deficits at the time of the PAS was correct.

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 rule to **uphold** the Department's action to terminate this claimant's 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 15th Day of November 2007.

**Sharon K. Yoho
State Hearing Officer**