



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 13, 2007



Dear Mrs. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 6, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your medical eligibility under the Aged/Disabled (HCB) Title XIX Waiver Services 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 Aged/Disabled Waiver 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 a 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 Section 503]

Information submitted at your hearing reveals that you meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI

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

Claimant,

v. Action Number: 06-BOR-3461

**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 March 13, 2007 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 telephonically on March 6, 2007 on a timely appeal filed December 11, 2006.

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:

[REDACTED] Claimant
[REDACTED] husband of Claimant
[REDACTED], Claimant's chore service provider
Kay Ikerd, RN, BoSS
Sue Bailey, RN, WVMI

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

All parties participated telephonically.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in its decision to deny benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 503, 503.1, 503.1.1 and 503.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 503
- D-2 Pre-Admission Screening (PAS) assessment completed on November 2, 2006
- D-3 Notice of Potential Denial dated November 16, 2006
- D-4 Notice of Denial dated December 4, 2006

VII. FINDINGS OF FACT:

- 1) The Claimant applied for benefits under the Aged/Disabled Waiver Program and underwent an evaluation to verify her medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on November 2, 2006 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified that the Claimant received four deficits on the Pre-Admission Screening (PAS) assessment in the areas of bathing, dressing, bladder incontinence and inability to vacate the building in the event of an emergency.

- 3) The Claimant was sent a Notice of Potential Denial on November 16, 2006 (D-3) and was advised that she had two weeks to submit additional medical information for consideration by WVMI. Additional information was received by WVMI on December 8, 2006 outside of the two-week time frame for consideration.
- 4) WVMI sent the Claimant a Notice of Denial (D-4) on December 4, 2006.
- 5) The Claimant, who suffers from multiple sclerosis and has varying daily symptoms, contended that additional deficits should be awarded in the following areas:

Physical assistance with grooming- The Claimant testified that she has her toenails cut by a podiatrist because she has vision problems and scoliosis, and that she would be unable to perform this task unassisted.

The WVMI nurse testified that if the Claimant has her toenails cut outside the home, this task does not meet criteria for physical assistance with grooming as a homemaker would not perform this activity. She testified that the Claimant is able to wash/brush her own hair and complete her own mouth care.

Based on testimony provided during the hearing, one (1) additional deficit is awarded for physical assistance with grooming. The Claimant is unable to cut her own toenails due to her medical condition and would require physical assistance regardless of whether the task is completed by another individual inside or outside of the home.

Physical assistance with eating- The Claimant testified that she is unable to cook her own meals, but she is capable of feeding herself with utensils.

The WVMI nurse testified that meal preparation is not considered in this area. The only policy consideration is the Claimant's ability to feed herself/cut meat.

No additional deficit is awarded in the area of physical assistance with eating as the Claimant is able to feed herself.

Physical assistance with walking and transferring- The Claimant testified that she normally uses a cane to walk and transfer in her household, however her ability to walk and transfer differs on a daily basis due to her medical condition.

The WVMI nurse testified that the Claimant was able to walk and transfer steadily with the use of a cane on the date the PAS assessment was completed.

Since the Claimant normally uses a cane for walking/transferring and the PAS indicates that she is supervised or uses an assistive device to perform these activities, no additional deficits are awarded in these areas.

The Claimant testified that she needs assistance with bathing, but she was awarded a deficit on the PAS for requiring physical assistance in this area. In addition, the Claimant testified that she is incontinent of bowel several times per week. However, she

was awarded a deficit for bladder incontinence on the PAS assessment and no additional deficits can be awarded for incontinence in accordance with policy.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 503 (D-1)- Program Eligibility for Client:

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.

- 7) 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 clients are medically eligible based on current and accurate evaluations.

B. Each applicant/client determined to be medically eligible for A/DW 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.

- 8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2 (D-1): An individual must have five (5) deficits on the Pre Admission Screening (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 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

Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)

Bathing ----- Level 2 or higher (physical assistance or more)

Dressing ---- Level 2 or higher (physical assistance or more)

Grooming--- Level 2 or higher (physical assistance or more)

Continence (bowel, bladder) -- Level 3 or higher; must be incontinent

Orientation-- Level 3 or higher (totally disoriented, comatose)

Transfer----- Level 3 or higher (one-person or two-person assistance in the home)

Walking----- Level 3 or higher (one-person assistance 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)

#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 Individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received four (4) deficits on a PAS completed by WVMI in November 2006 in conjunction with her Aged/Disabled Waiver Program application.
- 3) As a result of testimony presented during the hearing, one (1) additional deficit is awarded to the Claimant.
- 4) The one (1) additional deficit brings the Claimant's total number of deficits to five (5), rendering the Claimant medically eligible for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's action to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of March, 2007.

**Pamela L. Hinzman
State Hearing Officer**