



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 7, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 5, 2007. Your request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services 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 570]

Information submitted at your hearing revealed that you do not meet medical eligibility requirements for the Aged/Disability Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits under the Aged/Disabled Waiver Program.

Sincerely,

Raymond Keener, III
State Hearing Officer
Member, State Board of Review
cc: Erika Young, Chairman, Board of Review
BoSS
WVMI

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

_____,

Claimant,

v.

Action Number: 07-BOR-657

**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 5, 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 on April 5, 2007 on a timely appeal filed January 22, 2007.

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 (hereinafter "Agency").

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 (Did Not Appear)
_____, Medical Power of Attorney for Ms. _____
_____, Care-Giver and Grand-Daughter of Claimant
Libby Boggess, Registered Nurse, Bureau of Senior Services
██████████ Registered Nurse, West Virginia Medical Institute

Presiding at the hearing was Raymond Keener, III, 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 Agency was correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 570 & 500
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated October 6, 2006
- D-3 Notice of Potential Denial dated December 28, 2006
- D-4 Notice of Denial dated January 15, 2007
- D-5 Evaluation Request dated July 20, 2006

VII. FINDINGS OF FACT:

- 1) On January 15, 2007, a denial notice (D-4) was sent to the Claimant. A hearing request was received by the Board of Review January 22, 2007 and by this Examiner February 7, 2007. A hearing was scheduled for and held April 5, 2007.
- 2) Documents as noted in Section VI above were accepted.
- 3) Testimony was heard from the participants listed in Section III above. All persons providing testimony were placed under oath.
- 4) Ms. Libby Boggess, Registered Nurse for the Bureau of Senior Services, testified on behalf

of the Agency and explained the policy of the Agency in reaching its determination in this particular matter. Specifically, Ms. Boggess referenced Exhibit D-1 and explained that applicants for the Aged and Disability Waiver (“waiver”) program must meet all the stated criteria in order to be eligible for the program. Further, Ms. Boggess testified that applicants must be approved as medically eligible for the Nursing Facility Level of Care and that applicants must choose to participate in the waiver program as an alternative to the Nursing Facility care. Ms. Boggess further testified with respect to the issue of medical eligibility, and stated that a Quality Improvement Organization (“QIO”) under contract with the Agency currently determines medical eligibility for the waiver program and that QIO is currently the West Virginia Medical Institute. Ms. Boggess further testified with respect to the medical criteria aspect of the waiver process and stated that an individual must have five (5) deficits on the Pre-Admission Screening Form (“PAS”), in order to qualify medically for the waiver program.

5) Ms. [REDACTED], Registered Nurse for the West Virginia Medical Institute, testified with respect to the “MEDICAL CRITERIA” aspect of section 503.2 of page 2 of Exhibit D-1 and specifically referenced question number 24 in which she found that the Claimant exhibited no evidence of decubitus on her bottom or heels. Accordingly, Ms. [REDACTED] found no deficit in the area of decubitus for the Claimant. Ms. [REDACTED] further testified with respect to question number 25 regarding the issue of Claimant being able to vacate and stated that on the day she interviewed Ms. [REDACTED], that Claimant was found to be able to vacate the building in the event of an emergency so she was unable to find any deficit in this particular category. With respect to question number 26(a), Ms. [REDACTED] testified that Claimant was found to be able to feed herself and accordingly, no deficit was found in this category. With respect to question 26(b), Ms. [REDACTED] testified that Claimant required physical assistance in regard to dressing so that a deficit was justified with respect to this category. With respect to question number 26(c), Ms. [REDACTED] testified that Claimant was listed as requiring physical assistance regarding certain aspects of dressing and that this justified a deficit in this particular category. Regarding question number 26(d), Ms. [REDACTED] testified that Claimant exhibited a need for the requirement of physical assistance regarding certain aspects of grooming and that this justified a deficit in this particular category. With respect to question number 26(e), Ms. [REDACTED] testified that Claimant was listed as being incontinent regarding her bladder and that this condition justified a deficit. With respect to question 26(f), Ms. [REDACTED] testified that Claimant informed her that she had no trouble making it to the restroom prior to having a bowel movement and that accordingly, Ms. [REDACTED] found no deficit regarding bowel continence. With respect to question number 26(g), Ms. [REDACTED] testified that when she interviewed Claimant, that Ms. [REDACTED] was alert as to person, place and time. Ms. [REDACTED] testified that she did classify Claimant as being intermittently disoriented but found no justification for a deficit in this particular category. With respect to question number 26(h), Ms. [REDACTED] testified that Claimant listed as requiring a supervisory or assisted device such as a cane or the wall to help her move about. However, Ms. [REDACTED] noted that Claimant was able to get up out of bed on her own and accordingly did not find the justification for a deficit in this category. With respect to question number 26(i), Ms. [REDACTED] testified that she found no justification for a deficit. With respect to question number 26(j), Ms. [REDACTED] testified that Claimant does not currently utilize a wheelchair in her home and accordingly would not warrant any deficit in this particular category. With respect to question number 27, Ms. [REDACTED] testified that Claimant did not have any skilled needs in any of the specified areas which justified the finding of a deficit. Ms. [REDACTED] further testified that generally speaking, Claimant is capable of administering her own medicines and, accordingly, does not warrant a deficit in this particular category.

6) [REDACTED], Medical Power of Attorney for the Claimant, appeared and testified in support

of Ms. _____. Ms. _____ testified that she generally agreed that the Claimant's condition did not justify deficits regarding the area of decubitus. However, Ms. _____ disagreed with the opinion of Ms. _____ that Ms. _____'s condition did not justify a deficit with respect to the issue of being able to leave a building in the case of an emergency and stated that if Claimant were experiencing any onset of multiple sclerosis ("MS"), that it is likely that Claimant would not be able to make the necessary decisions to exit a building in the event of an emergency. Ms. _____ further testified that she also disagreed with Ms. _____ previously offered testimony that Claimant did not deserve deficits in the categories of transfer or walking. Ms. _____ testified that with regard to these particular areas, that Claimant's MS could possibly cause her to have sufficient problems to justify a deficit in these areas. Generally speaking, Ms. _____ did not disagree with the findings of Ms. _____ as they pertained to any of the other deficits in any of other categories.

7) Ms. _____, Care-Giver and Grand-Daughter of the Claimant, also testified on behalf of Ms. _____, and basically reiterated the previous testimony of Ms. _____ in that Ms. _____ set forth her opinion that due to Claimant's potential onset of MS, that Ms. _____ might have trouble vacating a building in the event of an emergency. Ms. _____ also set forth her opinion that Claimant should be awarded deficits in the areas of transferring and walking due to the potential onset and effect of MS upon Claimant.

8) Aged/Disabled Home and Community-Based Services Manual Section 570 (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.

9) Aged/Disabled Home and Community-Based Services Manual Section 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 services needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

10) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b - Medical Criteria:

An individual must have five (5) deficits on the PAS to qualify medically for the ADW 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, Alzheimers, 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 -- (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) Policy clearly specifies that an individual must be awarded five (5) deficits on the PAS 2005 in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received four (4) deficits on the PAS completed by Ms. [REDACTED] in conjunction with her annual medical reevaluation. These deficits were awarded in the areas of bathing, dressing, grooming and incontinence of the bladder. The testimony and opinion offered by Ms. [REDACTED] is hereby found to be reliable and credible and is specifically found to have provided an adequate foundation to support the opinion so offered by Ms. [REDACTED]
- 3) As a result of testimony presented during the hearing, no additional deficits are awarded to the Claimant. The evidence submitted on behalf of the Claimant in the form of the testimony of Ms. _____ and Ms. _____, taken together, is wholly insufficient and inadequate to justify or otherwise warrant granting deficits in the categories suggested by these particular witnesses. It is specifically found that the only evidence submitted on behalf of the Claimant in support of any further deficits is the testimony offered by both Ms. _____ and Ms. _____

_____ in which both individuals state that the possible onset of MS could cause potential problems for Claimant in regard to the categories of walking/transferring as well as adequately/safely vacating a building in the case of an emergency. It is specifically found that the testimony of both Ms. _____ and Ms. _____, in this regard, is highly speculative at best.

- 4) The Claimant's deficits remain at four (4) and she continues to lack the five (5) required deficits for Aged/Disabled Waiver Program eligibility. Therefore, the Department's proposal to terminate Waiver services is valid.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's benefits and services 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-46

ENTERED this 7th day of May, 2007.

Raymond Keener, III
State Hearing Officer