



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 22, 2007

_____ for

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 8, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through 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]

The information submitted at your hearing reveals that your medical condition does not 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 **uphold** the proposal of the Department to terminate your benefits and services under the Aged & Disabled Waiver Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

_____,

Claimant,

v.

Action Number: 07-BOR-907

**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 May 22, 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 May 8, 2007 on a timely appeal filed March 9, 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.

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 representative
██████████ CM, CCS
██████████, Claimant's friend
██████████, RN, Homemaker RN, Tender Loving Care
Jenni Sutherland, LSW, BoSS
██████████ RN, WVMI

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

It should be noted that benefits and services have continued pending a hearing decision.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in its decision to propose terminating the Claimant's benefits and services 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 January 30, 2007
- D-3 Notice of Potential Denial dated February 1, 2007
- D-4 Correspondence from ██████████, RNBSN, dated February 8, 2007
- D-5 Notice of Termination/Denial dated February 27, 2007

Claimant's Exhibits:

- C-1 Brain Wave test results from 2/8/05

VII. FINDINGS OF FACT:

- 1) On January 30, 2007, the Claimant was reevaluated (medically assessed) to determine medical eligibility for continued participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {Exhibit D-2, Pre-Admission Screening (PAS) completed on 1/30/07}. The Department noted that the Claimant, ██████████ and ██████████ participated in the assessment.

- 2) On or about February 1, 2007, the Claimant was notified of Potential Denial (Exhibit D-3). 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, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2.

Based on your PAS you have deficiencies in only 3 areas – Vacate a Building, Eating and Grooming.

The Claimant was notified that she could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final determination is made. Additional information was received within the 2-week timeframe (See Exhibit D-4, correspondence from RNBSN [REDACTED] dated February 8, 2007) and was reviewed for medical eligibility.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated February 27, 2007 (Exhibit D-5). This notice states, in pertinent part:

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 A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: 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 3 areas – Vacate a Building, Eating and Grooming.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) The Claimant's representatives contend that the Claimant should have been awarded a deficit in *bathing, medication administration* and *orientation*:

Bathing – The Claimant's representatives purported that the Claimant is unable to wash her back and therefore requires physical assistance. According to the evidence found in Exhibit D-2, page 6 of 7, the Claimant can transfer in and out of the shower, and on and off of a shower chair without assistance. The Claimant reported she can bathe independently and stated that "HM does not have time to help me." [REDACTED] attended the January 30, 2007 assessment and while she disagreed with HM not having time to assist the Claimant, she stated that the Claimant will not wait till HM can assist her. WVM RN [REDACTED] noted – "Per client she always baths self."

The Department cited correspondence (Exhibit D-4) from RNBSN [REDACTED] that includes the following information on bathing: “Bathing – does bath herself with stand by supervision. Due to her poor vision and poor balance misses shower chair. Has a history of falls. Again she does not feel she needs any help and ‘no one has time to help her.’ [REDACTED] will wait until the care providers are with someone else and then sneak into the shower. She does not realize her limitations or the danger she [sic] putting herself in.”

The documentation found in Exhibits D-2 & D-4 support the Department’s finding that the Claimant can bathe independently and requires only supervision. **Based on the evidence, a deficit cannot be awarded in bathing.**

Medication administration – The Claimant’s representatives contend that due to the Claimant’s medically documented hand tremors, the Claimant is unable to put her medication in her mouth. According to testimony received at the hearing, the Claimant’s medications must be put in a container and someone must physically steady her hand as she lifts the container to her mouth. Although the WVM RN acknowledge the Claimant’s hand tremors and stated that the tremors in her left hand are mild, testimony presented on behalf of the Claimant regarding medication administration is credible and consistent with complications from her medical condition. **Based on the evidence, a deficit is awarded in medication administration (+1).**

Orientation - RNBSN Shaw submitted Claimant’s Exhibit C-1 to show that the Claimant has some mental functioning difficulties. She stated that she must be supervised at all times. The Department noted that confusion is not the same as disorientation and that a deficit can only be awarded if the individual is assessed at a level-3 (totally disoriented). The WVM RN noted the following in Exhibit D-2 (page 7 of 7) – “Client is oriented, there is no dx of Alzheimers or Dementia.” **Whereas the evidence fails to demonstrate that the Claimant is totally disoriented, a deficit cannot be awarded in orientation.**

5) 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.

6) 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.

7) 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 medical assessment (PAS) completed in January 2007 by WVMI identifies three (3) deficits.
- 3) The evidence submitted on behalf of the Claimant identifies one additional deficit – Medication administration as the Claimant’s documented physical limitations (hand tremors) prevent her from self-administering medications.
- 4) Whereas the Claimant demonstrates only four (4) deficits, medical eligibility for continued participation in the Aged/Disabled Waiver Program cannot be established.

IX. DECISION:

It is the decision 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-29

ENTERED this 22nd Day of May, 2007.

**Thomas E. Arnett
State Hearing Officer**