



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

July 16, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 10, 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 requires 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 **reverse** the action of the Department in denying your application for benefits and services through the Medicaid, 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

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

Claimant,

v.

Action Number: 07-BOR-913

**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 July 16, 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 July 10, 2007 on a timely appeal filed March 8, 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
_____, Claimant's daughter
[REDACTED] RN, Helping Hands
Cathie Zuspan, RN, BoSS
Mary Hamilton, RN, BMS

Presiding at the hearing was Thomas E. Arnett, 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 decision to deny the Claimant's application for 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 November 2, 2006
- D-3 Notice of Potential Denial dated December 13, 2006
- D-4 Correspondence from _____ dated December 21, 2006
- D-5 Addendum completed by [REDACTED]
- D-6 Notice of Denial dated February 2, 2007

VII. FINDINGS OF FACT:

- 1) On November 20, 2006, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {see Exhibit D-2, Pre-Admission Screening (PAS) completed on 11/20/06}.

- 2) On or about December 13, 2006, 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 4 areas – Bathing, Grooming Dressing and Continence.

The Claimant was notified that she could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final decision was made. Additional information was received / reviewed and has been identified as Exhibit D-4.

- 3) The WVMi RN reviewed Exhibit D-4 and completed an Addendum (Exhibit D-5) to the PAS. Exhibit D-5 states:

Additional information received and reviewed on December 26, 2006. A letter was received from _____, applicant's daughter. Med for arthritis was listed on letter from daughter, however diagnosis of arthritis was listed on original PAS and will not be changed. The daughter noted that she felt the applicant was unable to vacate in the event of an emergency. Based on what was observed on the day of the assessment, this will remain unchanged. Observed applicant use walker without difficulty and a ramp was available to exit home. Daughter stated applicant incontinent Many times a day. This should be changed to level 3, incontinent. It was a grammatical error.

No additional deficits were awarded by the WVMi RN as a result of the additional information.

- 4) The Claimant was subsequently notified that her application for ADW Program eligibility was denied in a termination/denial notice dated February 2, 2007 (Exhibit D-6). 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 4 areas – Bathing, Grooming, Dressing and Continence.

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

- 5) The Claimant and her representatives contend that she meets the medical eligibility criteria for participation in the ADW Program as she also demonstrates program qualifying deficits in Vacating and Transferring.
- 6) [REDACTED] RN, testified that while the Claimant can ambulate in her home with a walker, the ramp leading out of her house has a step up and the boards are uneven. According to RN [REDACTED] the Claimant needs physical assistance to exit her home at all times, not just during an emergency. Ms. _____ concurred with RN Null and stated in her correspondence (Exhibit D-4) “Also, I do not believe she is capable of exiting her residence should there be an emergency. It is not something she can do and hold onto the walker at all times for support.”

On Exhibit D-2, Nurse’s Overall Comments, the following is documented for walking: “Client uses walker in home, but states she upsets her walker at times and can’t step up at all.”

The Claimant is unable to “step up” and access the ramp leading out of her home and she has a history of upsetting her walker during non-emergent situations. Based on the evidence, the Claimant is not capable of vacating her home in the event of an emergency. **A deficit in vacating is therefore awarded.**

- 7) [REDACTED] cited the finding of the evaluating RN under the Nurse’s Overall Comments in Exhibit D-2 - Transferring: “Client states must use walker. Client reports can’t get legs and feet up on bed without assistance.”

The evaluating RN did not refute this statement or cite findings to the contrary, however, a deficit was not awarded. Testimony received on behalf of the Claimant is consistent with the documentation on the assessment - the Claimant requires physical assistance to transfer into her bed. **Based on the evidence, a deficit is awarded in transferring.**

- 8) 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.

- 9) 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.

10) 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) The policy that governs the ADW Program states 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 November 20, 2006 PAS (medical assessment) identified four (4) deficits at the time of application – Bathing, Dressing, Grooming and Incontinence.
- 3) The evidence submitted at the hearing reveals two (2) additional deficits – Vacating a building and Transferring.

- 4) Whereas the Claimant demonstrates six (6) program qualifying deficits, medically eligibility for the Aged/Disabled Waiver Program is therefore established.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's action to deny the Claimant's application for benefits and services through 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 16th Day of July, 2007.

**Thomas E. Arnett
State Hearing Officer**