



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

July 14, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 30, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your benefits 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 501]

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

It is the decision of the State Hearing Officer to **uphold** 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

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

-----,

Claimant,

v.

Action Number: 09-BOR-1029

**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 14, 2009 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 June 30, 2009 on an appeal filed April 6, 2009 and received by the Hearing Officer on May 19, 2009.

II. PROGRAM PURPOSE:

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 former husband
Kay Ikerd, RN, Bureau of Senior Services
Kim Sang, RN, West Virginia Medical Institute

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

It should be noted that all parties participated telephonically.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in its action 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 501.3, 501.3.1, 501.3.1.1, 501.3.2 and 501.3.2.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) completed on December 10, 2008
- D-3 Notice of Potential Denial dated December 11, 2008
- D-4 Denial notice dated December 30, 2008

Claimant's Exhibits:

- C-1 Letter from Dr. [REDACTED] dated January 26, 2009
- C-2 Letter from Dr. [REDACTED] dated June 3, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant is an applicant of benefits under the Aged/Disabled Waiver Program and underwent a medical evaluation to determine if she meets medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on December 10, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits zero (0) qualifying deficits.
- 3) The Claimant was sent a Notice of Potential Denial on December 11, 2008 (D-3) and was advised that she had two weeks to submit additional medical information for consideration.
- 4) The Claimant was sent a final denial notice on December 30, 2008 (D-4).
- 5) The Claimant testified that she has good and bad days in regard to her medical condition, and would use her cane and climb out a window in the event of an emergency. She stated that she can feed herself but has difficulty preparing food, and can bathe herself but has difficulty getting in and out of the bathtub. The Claimant testified that she has difficulty

Letters from Dr. [REDACTED] (C-1 and C-2) primarily address the Claimant's psychiatric condition and her functioning in the areas of housekeeping, financial management, laundry, transportation, shopping and hygiene.

The WVM Nurse testified that – on the date of the assessment - the Claimant reported she would be able to get out of her home unassisted in an emergency situation. The Claimant said she is able to feed herself, and food preparation is not considered in determining a deficit for eating. The Claimant reported that she was able to get in and out of the tub and wash unassisted on the date of the assessment. She stated that she had dressed unassisted on that date, but has difficulty getting her bra fastened. PAS notes indicate that the Claimant reported trimming her own toenails although “it takes her a little bit.” The Claimant reported bladder incontinence at least three (3) times per week, but had difficulty recalling her most recent accidents. The nurse addressed the differences between stress incontinence and regular incontinence. The nurse testified that the Claimant was alert and oriented during the assessment, and was able to transfer and walk unassisted on that date. The Claimant had reported that her ex-husband assists her in setting up medications.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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 501.3.1.1 (D-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 501.3.2 (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. The Claimant was awarded zero (0) deficits on her December 2008 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, no additional deficits are awarded to the Claimant. The Claimant does not require physical assistance to vacate and told the WVMI Nurse she could bathe, dress and groom unassisted on the date of the assessment. The Claimant was oriented and walked/transferred independently in the home on the date of the assessment. In addition, the Claimant is able to take her medication with prompting/supervision. While the issue of urinary incontinence can be debated, the awarding of a deficit in this area would be

- 3) The required deficits have not been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's action to deny the Claimant's benefits 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 14th Day of July, 2009.

**Pamela L. Hinzman
State Hearing Officer**