



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

April 3, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 17, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your 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 501]

The information submitted at your hearing reveals that your medical condition no longer 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 **uphold** the Department's proposal to terminate your benefits and services provided through the Medicaid, Aged/Disabled Waiver Services Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
BoSS
[REDACTED] Senior Services, Inc.
WVMI

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

-----,

Claimant,

v.

Action Number: 08-BOR-2017

**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 3, 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 originally scheduled to convene on January 15, 2009 but was rescheduled due to inclement weather and convened on March 17, 2009 on a timely appeal filed August 26, 2008.

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
----, CM, Berkeley Senior Services
Kay Ikerd, RN, BoSS (Participated telephonically)
-----, RN, WVMi (Participated telephonically)

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 or not the Department was correct in its proposal to terminate the Claimant's benefits and services provided through the Medicaid Aged & Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

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) assessment completed on July 2, 2008
D-3 Notice of Potential Denial dated July 18, 2008
D-4 Notice of Termination/Denial dated August 4, 2008

VII. FINDINGS OF FACT:

- 1) On July 2, 2008, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on 7/2/08}.
- 2) On or about July 18, 2008, 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 501.3.2.

Based on your PAS you have deficiencies in only 3 areas – Grooming, Dressing and Continence.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks. It should be noted that no additional information was received/reviewed.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated August 4, 2008 (Exhibit D-4). 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 – Grooming, Dressing and Continence.

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

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates three (3) deficits but indicated the medical assessment completed in July 2008 fails to identify five (5) functional deficits necessary to establish medical eligibility for participation in the ADW Program.
- 5) The Claimant and his representatives contend that the Claimant remains medically eligible to participate in the ADW Program as he is demonstrating a functional deficit in Eating, Bathing, Transferring, Walking, Medication Administration and Vacating [in the event of an emergency]. The following findings addresses each of the contested areas:

Eating – The Claimant testified that he is able to feed himself but he is unable to fix his own meals. The Department noted that meal preparation is not considered when evaluating this area – only the individual’s ability to feed oneself. Based on the information received, the Claimant was properly assessed at a Level 1 (self/prompting) - no deficit can be awarded in eating.

Bathing- The Claimant purported that he has a walk-in shower and that he able to wash all parts of his body except his back and bottom of his feet. The Claimant testified that he places a washcloth on the floor of his shower and rubs his feet on the cloth to wash the bottoms of his feet. It is also documented that the Claimant has a “back brush” and the he is able to use it to wash his back as he has done it before. While the Claimant is demonstrating some difficulties with bathing, he has made the necessary adjustments to overcome these difficulties. There is insufficient evidence to indicate the Claimant requires physical assistance with bathing, therefore, a deficit cannot be awarded.

Transferring – The Claimant was assessed at a Level-2 (supervision/assistive device) in the functional area of transferring. The Claimant testified that he had bars installed in his bathroom to assist with transferring on-and-off of the toilet; he uses a trapeze bar to transfer in-and-out of bed; and his chair in the living room is elevated to make transferring easier. The WVMi RN noted some difficulty when the Claimant transferred out of his chair but documented he was able to manage with the assistance of the arm on the chair as well as his cane. While it is clear the Claimant is experiencing some difficulty with transferring, modifications have been made and he remains able to transfer with supervision and the aid of an assistive device. The evidence demonstrates the Claimant does not require hands-on physical assistance (Level-3) to transfer, and therefore, a deficit cannot be awarded.

Walking- The evidence reveals that the Claimant was assessed at a Level-2 (supervised/assistive device). The Claimant reported information consistent with documentation found on the PAS – He uses a cane to ambulate in his home and does not require any hands-on physical assistance. Based on the evidence, the Claimant has been properly assessed and a deficit cannot be awarded.

Medication Administration – In order to qualify for a deficit in this area, the individual must require a level of assistance greater than prompting and supervision – medications must be administered by someone other than the individual due to mental and/or physical limitations. The Claimant reported that he is able to administer all of his own medications. He reported that he does not require any assistance with medication administration, although he noted that his wife often makes sure he is taking the correct pills. The evidence demonstrates the Claimant was properly assessed by the WVMi RN – Claimant is self-administering his medications and this does not qualify as a functional deficit.

Vacating – The Claimant reported that he and his wife moved to the first floor of the complex in which they reside. Because of this move, he stated that he can vacate his residence in the event of an emergency. The Claimant’s testimony is consistent with his ambulatory and mental abilities. The Claimant is capable of vacating his residence in the event of an emergency – no deficit can be awarded in this area.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (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 501.3.2 Medical Criteria: 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) Medicaid policy requires that an individual must demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded three (3) deficits on a PAS completed by WVMI in July 2008 – Grooming, Dressing and Continence.
- 3) The evidence submitted at the hearing fails to identify any additional deficits.
- 4) Whereas the Claimant demonstrates only three (3) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's benefits and services through the Medicaid, 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 3rd Day of April, 2009.

**Thomas E. Arnett
State Hearing Officer**