



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

June 4, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 3, 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 meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in denying 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
WVMI

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

-----,

Claimant,

v. **Action Number: 09-BOR-820**

**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 June 4, 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 convened on April 28, 2009 on a timely appeal filed February 24, 2009. The hearing was continued to allow for the resubmission of documentation and reconvened on June 3, 2009.

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.

The ADW Program is defined as a long-term care alternative that provides services to enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

III. PARTICIPANTS:

-----, Claimant (participated on April 28, 2009 and June 3, 2009)

-----, Claimant's daughter (on April 28, 2009)

Telephonic participants:

Kay Ikerd, RN, Bureau of Senior Services (on April 28, 2009)

Cecelia Brown, Quality Assurance Program Manager, Bureau of Senior Services (on June 3, 2009)

Barbara Plum, RN, West Virginia Medical Institute (on April 28, 2009 and June 3, 2009)

Presiding at the hearing on both dates was Pamela L. Hinzman, 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 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, 501.3.1.1 and 501.3.2

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 January 6, 2009
- D-3 Notice of Potential Denial dated January 21, 2009
- D-4 Statement from Dr. [REDACTED]
- D-5 Denial notice dated February 5, 2009

Claimant's Exhibits:

- C-1 Letter from Dr. [REDACTED]
- C-2 Statement from Dr. [REDACTED]

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 January 6, 2009 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified four (4) qualifying deficits for the Claimant in the areas of physical assistance with bathing, dressing and grooming, and incontinence.
- 3) The Claimant was sent a Notice of Potential Denial on January 21, 2009 (D-3) and was advised that she had two weeks to submit additional medical information for consideration.

The Claimant submitted a letter from Dr. [REDACTED] dated January 28, 2009 (D-4) as additional information, however the documentation failed to alter the PAS findings.

- 4) The Claimant was sent a final denial notice on February 5, 2009 (D-5).
- 5) The Claimant contended that one (1) additional deficit should be awarded based on inability to vacate in the event of an emergency. The Claimant testified that there are days when she cannot get out of bed due to her medical condition. She indicated that she has had orthopedic problems for 11 years and needs knee replacement surgery. The Claimant testified that she can get out of bed unassisted on some days, but she frequently needs help. PAS comments indicate the Claimant had reported that, due to back pain, she may need physical assistance to vacate in an emergency situation depending on her ability to sit up on the edge of her bed at that time.

The Claimant provided a letter from Dr. [REDACTED] dated March 2, 2009. The letter states that the Claimant “has been seen for multiple orthopedic complaints including her right shoulder and both of her knees. Due to her multiple orthopedic problems, she would be unable to safely escape her house if a fire should happen to occur.” The Claimant also provided Exhibit C-2, an April 28, 2009 statement from Dr. [REDACTED] indicating that she has had osteoarthritis in her left knee since July, 2000. The PAS indicates that the Claimant also has diagnoses of fibromyalgia and chronic pain.

The WVM Nurse testified that the Claimant was able to transfer unassisted and ambulated without difficulty on the date of the assessment. The nurse indicated that the Claimant has a door in her bedroom that leads to an outdoor ramp.

- 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 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 four (4) deficits on her January 2009 Aged/Disabled Waiver Program medical evaluation.
- 2) As a result of information provided during the hearing, one (1) additional deficit is awarded by the Hearing Officer based on inability to vacate in the event of an emergency. While the Claimant was able to walk/transfer unassisted on the date of the assessment, she had reported a potential need for physical assistance with vacating since her abilities vary from day to day. The Claimant provided evidence from an orthopedic physician who believes she would be unable to escape safely in the event of an emergency due to multiple conditions.
- 3) The addition of one (1) deficit brings the Claimant's total number of deficits to five (5).

- 4) The required deficits have 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 **reverse** the Agency's action to deny the Claimant's benefits and services under the Aged/Disabled, Title XIX (HCB) Waiver Program. The additional deficit awarded by the Hearing Officer must be considered when determining the Claimant's Level of Care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of June, 2009.

Pamela L. Hinzman
State Hearing Officer