



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 27, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 13, 2009. Your hearing request was based on the Department of Health and Human Resources' termination of your medical eligibility 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 no longer meet the medical eligibility requirements for the Aged/Disabled 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,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 09-BOR-926

**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 13, 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 May 13, 2009 on a timely appeal filed March 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.

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 and caregiver
-----, Case Manager, Catholic Charities Services

Kay Ikerd, BOSS
Kathy Gue, WVMI

It should be noted that the hearing was conducted telephonically by LEADERPHONE.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and 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 proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 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 February 2, 2009
- D-3 Not Provided
- D-4 Notice of Denial dated February 25, 2009
- D-5 Request for Hearing dated February 27, 2009

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for the Title XIX Aged and Disabled Waiver Program during the month of February 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on February 2, 2009 and determined that the Claimant no longer meets medical eligibility criteria for the program. The nurse testified the Claimant received one (1)

deficit on the Pre-Admission Screening (PAS) assessment in the area of continence of bowel and bladder.

- 3) The Department sent the Claimant a Notice of Denial (D-4) on February 25, 2009. The Claimant requested a hearing on March 3, 2009.
- 4) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Dressing: which is under Functional Abilities. The Claimant was rated as self/prompting. The WVMi nurse recorded the following on the PAS:

She denies needing help with getting dressed. Denies needing help with shoes and socks. She says that she is getting back to where she can do it herself. Observed the member reach over her head, touch her shoulders, reach down to her ankles but she is unable to cross her legs at the knees. Hand grips equal.

The Claimant testified that she could not dress herself “good”, and that someone has to help her with her socks. She states she does recall telling the nurse that she could dress herself.

Eating: which is under Functional Abilities. The Claimant was rated as self/prompting. The WVMi nurse recorded the following on the PAS:

She denies needing help with eating or cutting up food.

The Claimant’s daughter stated that the Claimant can eat by herself, but she cannot cook. She cannot cut up sandwiches or hold a sandwich in her hands. She takes little bites. The Claimant stated she has trouble with her left hand going numb and she is left-handed. She cannot pick up anything heavy. The Claimant acknowledged that at the time of the assessment she could cut up her own food.

Bathing: which is under Functional Abilities. The Claimant was rated as being “self/prompting” in this area. The WVMi nurse recorded the following on the PAS:

She reports that she will take a sponge bath most of the time. She denies needing help with washing her body. She says that she has a back scrubber to wash her back.

The Claimant’s daughter testified that at times she can wipe herself off, but sometimes she cannot. She states that at time she must wash her private areas for her. The Claimant states that she gets “dizzy spells” sometimes and needs help in the tub.

Grooming: The Claimant was rated as needing “self/prompting” in this area. The WVMi nurse recorded the following on the PAS:

She washes her hair in the sink. She can comb her hair. She cleans her teeth. She files her fingernails and clips her toenails.

The Claimant's daughter testified that she washes her mother's hair and cuts her toe nails and fingernails.

Vacating a Building: The Claimant was rated as needing "supervision" in this area. The WVMI nurse recorded the following on the PAS:

In the event of an emergency the member says that she thinks she would be able to vacate the home. Observed member get to a standing position from the kitchen chair by using the table to push up. Observed member walk to get her insulin. She held to the kitchen chair [sic]. No cane or walker. The home has a ramp.

The Claimant's daughter testified that if her mother goes off the porch and down the steps they have to hold on to her because she staggers and gets anxious or upset. She has panic attacks.

- 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 Claimant received one (1) deficit in February 2009 in conjunction with her Aged/Disabled Waiver Program annual re-evaluation in the area of continence.
- 3) The totality of the evidence and testimony presented during this hearing support the finding of one (1) additional deficit in the area of bathing. Although the Claimant reported she could take a sponge bath, no details were given concerning actual bathing in a tub; therefore I am relying on testimony provided during the hearing in this area. The Claimant clearly has not provided evidence to support deficits in the other areas contested.
- 4) The required five (5) 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 proposal to deny the Claimant's medical eligibility 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 27th Day of May, 2009

**Cheryl Henson
State Hearing Officer**