



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

April 20, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 19, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate 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 proposal of the Department to terminate 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
CWVAS
BoSS
WVMI

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

-----,

Claimant,

v. **Action Number: 11-BOR-636**

**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 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 via videoconference on April 19, 2011 on an appeal filed January 12, 2011.

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
-----, RN, [REDACTED] Services
-----, Case Manager, [REDACTED] Services
Kay Ikerd, RN, Bureau of Senior Services
Courtenay Smith, 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.

IV. QUESTION TO BE DECIDED:

The question 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 501.3, 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 14, 2010
- D-3 Notice of Potential Denial dated December 15, 2010
- D-4 Denial Notice dated January 3, 2011

Claimant's Exhibits:

- C-1 Information from -----, M.D., dated December 23, 2010
- C-2 Information from -----, M.D., dated February 1, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical evaluation to determine if she continues to meet medical eligibility criteria for the program.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Courtenay Smith completed a Pre-Admission Screening (PAS) medical assessment on December 14, 2010 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The

nurse determined that the Claimant exhibits four (4) qualifying deficits in the areas of *inability to vacate the building in the event of an emergency, and physical assistance with bathing, dressing and grooming.*

- 3) The Claimant was sent a Notice of Potential Denial on December 15, 2010 (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 January 3, 2011 (D-4).
- 5) The Claimant's representatives contended that she should receive additional deficits for *incontinence of bladder and physical assistance with eating.*

-----, Registered Nurse with Central West Virginia Aging Services, testified that the Claimant's Plan of Care indicates she dribbles urine throughout the day and uses incontinence supplies to protect her clothing. The Claimant testified that she has had the incontinence problem for years and it is gradually getting worse. The Claimant's witnesses indicated that she could have been confused when asked about incontinence during the assessment. The Claimant provided Exhibit C-2, documentation from -----, M.D., dated February 2, 2011, which notes that the Claimant has "urinary freq. and urgency."

The WVMi Nurse testified that the Claimant denied bladder incontinence on the date of the assessment and did not report using incontinence supplies. The WVMi Nurse stated that the Claimant's son was present during the assessment and her homemaker entered the room at times. In addition, the Claimant's former Case Manager was present for a portion of the assessment. The WVMi Nurse testified that she reviewed the PAS with those present and no one voiced objections to the information reported by the Claimant in regard to urinary incontinence.

The Claimant's representatives also provided Exhibit C-1, documentation from Dr. [REDACTED] dated December 23, 2010, which states that the Claimant requires assistance with cutting up and peeling foods due to arthritis. The Claimant's current Case Manager, -----, indicated that it did not appear this documentation had been submitted to WVMi by the Claimant's former case manager. The Claimant's witnesses reported that the Claimant has difficulty performing these tasks on certain days due to her arthritis.

The WVMi Nurse testified that the Claimant reported she could feed herself, and cut and peel foods without assistance on the date of the assessment.

- 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 four (4) deficits on her December 2010 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, no additional deficits can be awarded. Neither the Claimant nor those present on the date of the assessment reported that she had incontinence of urine or needed assistance with cutting/peeling foods.
- 3) The Claimant's total number of deficits remains at four (4). Therefore, medical eligibility for the Aged/Disabled Waiver Program has not been established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate 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 20th Day of April, 2011.

**Pamela L. Hinzman
State Hearing Officer**