



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

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

January 12, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 11, 2012. 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
Health Consultants Plus
BoSS
WVMI

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

IN RE: -----,

CLAIMANT,

v.

ACTION NO.: 11-BOR-2365

**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 telephone on January 11, 2012 on an appeal filed November 8, 2011 and received by the Hearing Officer on November 21, 2011.

It should be noted that the Claimant's benefits have been continued pending a hearing decision.

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
-----, Case Manager, Health Consultants Plus
Brian Holstine, Licensed Social Worker, Bureau of Senior Services
-----, 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 501.5, 501.5.1 and 501.5.1.1

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 October 12, 2011
- D-3 Pre-Admission Screening (PAS) completed on October 28, 2010
- D-4 Potential Denial Notice dated October 19, 2011
- D-5 Denial Notice dated November 2, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Medicaid 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 ----- completed a Pre-Admission Screening (PAS) medical assessment on October 12, 2011 (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 in areas of functionality.

- 3) The Claimant was sent a Potential Denial Notice (D-4) on October 19, 2011 and was advised that she had two weeks to submit additional medical information for consideration. No additional information was submitted.
- 4) The Claimant was sent a final Denial Notice on November 2, 2011 (D-5).
- 5) Witnesses for the Claimant contended that additional deficits should be awarded in the following areas:

Inability to vacate the building in the event of an emergency- -----, Case Manager with Health Consultants Plus, testified that she believes the Claimant would be mentally unable to vacate her residence in the event of an emergency, as she would likely feel anxious and overwhelmed. It should be noted that the Claimant has been diagnosed with paranoid schizophrenia and bipolar disorder.

The WVMi Nurse testified that the Claimant reported taking several medications that cause drowsiness and stated she may need assistance vacating the home in the event of an emergency. However, no deficit was awarded in this area of functionality. The nurse stated that the Claimant was wide awake during her visit, therefore, she was deemed able to vacate independently.

Based on the consistency of information recorded on the PAS and testimony provided during the hearing concerning the Claimant's medication side effects and anxiety, the Claimant is awarded one (1) deficit for inability to vacate in the event of an emergency.

Physical assistance with bathing, dressing and grooming- The Claimant's Case Manager contended that she should have been awarded deficits for requiring physical assistance with bathing, dressing and grooming, as she needs supervision/assistance with these functional activities.

The WVMi Nurse testified that the Claimant reported the ability to bathe, dress and groom unassisted on the date of the assessment. Therefore, she was rated as able to perform these activities independently. The nurse indicated that the Claimant had received deficits in these areas on a PAS completed in October 2010 (D-3), however, she had reported a need for physical assistance with the activities at that time.

No deficits can be awarded for physical assistance with bathing, dressing and grooming, as the Claimant reported she did not require assistance with these activities on the assessment date.

Continence of bladder- The Claimant's Case Manager testified that the Claimant is incontinent of bladder more than three times per week.

The WVMi Nurse testified that the Claimant reported she experiences occasional bladder incontinence, but denied that any bladder accidents had occurred within the two months prior to the PAS date. The Claimant had been rated as incontinent of bladder on the 2010 PAS because she reported having bladder accidents more than three times per week at that time.

As the Claimant denied experiencing any bladder accidents within the two months prior to the October 2011 PAS, no deficit can be awarded in the area of continence of bladder.

The Claimant, who was unaccompanied during the PAS, testified that she was uncomfortable providing information to the WVMi Nurse and simply answered questions to get the nurse out of her residence. ----- indicated that she became the Claimant's Case Manager in September 2011, but was aware of the PAS appointment. It should be noted that no additional information was provided to WVMi by the Case Management Agency after the Potential Denial Notice was issued.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (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 nursing home level of care.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (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 501.5.1.1 (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 – (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 October 2011 Aged/Disabled Waiver Program medical evaluation.
- 2) As a result of information provided during the hearing, one (1) additional deficit is awarded to the Claimant in the area of mental inability to vacate in the event of an emergency.
- 3) As the Claimant has been awarded only one (1) deficit, she continues to lack the required deficits for continued participation in the Aged/Disabled Waiver Program.

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 12th Day of January, 2012.

**Pamela L. Hinzman
State Hearing Officer**