



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 1, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 29, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your services through the Aged/Disabled Waiver Program.

In arriving at a decision, the State Hearings 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 Home and Community Based Waiver Services Manual § 503).

The information which was submitted at your hearing revealed that at the time of the February 6, 2008 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the decision of the Department to terminate your services through the Aged/Disabled Waiver Program.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
[REDACTED] Americare Management Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-1008

**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 July 29, 2008 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 July 29, 2008 on a timely appeal, filed March 11, 2008.

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

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
_____, Case Manager, Americare Management Services
_____, Homemaker

Kay Ikerd, Bureau of Senior Services (appeared by phone)
Selena Hall, RN, West Virginia Medical Institute (appeared by phone)

Presiding at the Hearing was Kristi Logan, 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 Department's decision to terminate Claimant's services through the Aged/Disabled Waiver Program is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual § 503

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual § 503, 503.1, 503.1.1 and 503.2
- D-2 Pre-Admission Screening form dated February 6, 2008
- D-3 Notification Letter dated February 25, 2008

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Claimant was due for re-evaluation for the Aged/Disabled Waiver Program and a new Pre-Admission Screening (PAS) form was completed on February 6, 2008 by Selena Hall, RN with West Virginia Medical Institute (WVMI) (D-2). Present during the assessment was _____ Claimant's homemaker and his case manager, _____
- 2) Claimant was awarded deficits in vacating in an emergency, eating, grooming and bladder incontinence. One additional deficit was required for Claimant to remain eligible for the Aged/Disabled Waiver Program. A notification letter dated February 25, 2008 was issued and read in part (D-3):

Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS indicated deficiencies in 4 areas. Because you have less than 5 deficits at the level required, your services are being terminated.

- 3) Ms. [REDACTED] Claimant's case manager, presented Claimant's case for him and contested that he did not receive a deficit in the area of dressing. Ms. [REDACTED] testified that Claimant had previously broken his right shoulder and clavicle bone which still gave him problems. Some days Claimant has difficulty getting his arms through his shirts. He also needs assistance with buttons, snaps and zippers due to his Parkinson's disease.

Ms. [REDACTED] stated that Claimant's problems with dressing were mentioned to the assessing nurse, Ms. Hall, during the assessment. Claimant's inability to get his arm through his shirts due to his shoulder problems was specifically addressed.

- 4) Claimant's homemaker, Ms. [REDACTED] testified that she assists Claimant at least three (3) days a week with dressing. She has to help him get his arms through his shirt sleeves and does all buttons for him. Ms. [REDACTED] also stated that she told Ms. Hall during the assessment that she did help Claimant with dressing, specifically getting his arms through the sleeves. She stated that during the assessment, many things were talked about other than the assessment such as politics and Ms. Hall may have gotten distracted.

- 5) Ms. Hall testified that she has no memory of Ms. [REDACTED] or Ms. [REDACTED] discussing Claimant's difficulty with dressing the day of the assessment. Claimant told her he could dress himself but had problems with buttons, snaps and zippers as was documented in the PAS.

Claimant demonstrated to Ms. Hall how he was able to bathe himself by touching his toes and extending his arms to wash up and down his back. Ms. Hall stated the range of motion he showed during this demonstration led her to believe he had no problems dressing himself.

- 6) Aged/Disabled Home and Community-Based Services Manual § 503.2 states:

Medical Criteria

An individual must have five (5) deficits on the 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

(a) Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)

- (b) Bathing - Level 2 or higher (physical assistance or more)
- (c) Dressing - Level 2 or higher (physical assistance or more)
- (d) Grooming - Level 2 or higher (physical assistance or more)
- (e) Bowel Continence - Level 3 or higher; must be incontinent
- (f) Bladder Continence – Level 3 or higher; must be incontinent
- (g) Orientation - Level 3 or higher (totally disoriented, comatose)
- (h) Transfer - Level 3 or higher (one-person or two-person assistance in the home)
- (i) Walking - Level 3 or higher (one-person assistance in the home)
- (j) 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. Claimant was awarded four (4) deficits on his February 2008 medical evaluation.
- 2) Claimant’s case manager and homemaker gave credible testimony that Claimant needs physical assistance with dressing at least three (3) times weekly and this need was not only present at the time of the assessment but conveyed to the assessing nurse. Medical documentation of a previously broken shoulder and clavicle and a diagnosis of Parkinson’s disease support the argument that Claimant does require assistance with dressing. Claimant shall be awarded an additional deficit in dressing.
- 3) Claimant has the five (5) deficits required by policy to remain eligible for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to terminated Claimant’s services through the Aged/Disabled Waiver Program. Claimant will be awarded an additional deficit in dressing.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of August, 2008.

**Kristi Logan
State Hearing Officer**