



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 30, 2008

Dear Ms. _____-:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 17, 2008. Your hearing request was based on the Department of Health and Human Resources' proposed termination of services under the Aged Disabled Waiver, ADW, 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 ADW 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 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 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the February 7, 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 action of the Department to terminate services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Oretta Keeney, WVMI
[REDACTED] Co. Council on Aging

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

_____,

Claimant,

v.

Action Number: 08-BOR-1009

**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 17, 2008 for _____ on a timely appeal filed March 11, 2008. This hearing was originally scheduled for May 12, 2008 and a continuance was granted to the claimant to seek council. The hearing was convened on June 17, 2008 on a timely request received March 11, 2008. 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.

The claimant's benefits have been continued through this hearing process.

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's Witnesses:

_____, Claimant

_____, Case Manager, _____ County Council on Aging

_____, Homemaker, _____ County Council on Aging

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone

Tammy Kessell, WVMI Nurse, by speakerphone

Presiding at the Hearing was Sharon K. Yoho, 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 was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §500**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §503 thru 503.4

D-2 Pre-Admission Screening, PAS, completed February 7, 2007

D-3 Eligibility Determination dated February 7, 2008

D-4 Notice of potential denial dated February 15, 2008

D-5 Notice of denial dated March 3, 2008

VII. FINDINGS OF FACT:

- 1) This claimant is a 56-year-old female whose Aged Disabled waiver case was undergoing a re-evaluation in February 2008. She has primary diagnoses of Multiple Sclerosis. Other diagnoses include Fibromyalgia, Hypertension, Diabetes, and Gerd.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on February 7, 2008 with the claimant, her case manager and her homemaker present. The nurse determined from observation and the answers given to her at the assessment that only three qualifying deficit could be awarded. Those qualifying deficits were in the areas of eating, bathing and grooming.

- 3) The claimant and her witnesses introduced issues in the areas of vacating in an emergency, dressing and bladder incontinence.
- 4) The claimant advised the nurse at the assessment that her homemaker helps her dress and that there are days that the homemaker has to help her more. She told the nurse that she lives in her pajamas and on weekends when she can go outside, she will put on a housecoat. She advised the nurse that there are days that she cannot put her shoes on, but can put slip on shoes on without help. She cannot do buttons. The claimant advised the nurse that she had dressed herself that day with difficulty. The nurse made a determination that the claimant did not need hands on assistance for dressing since she did dress her self on that day and that she is able to give herself insulin injections. The case manager testified that due to the claimant's MS and Fibromyalgia she has difficulty with fine motor skills.
- 5) The claimant told the evaluating nurse that in an emergency she would, "get in her scooter and take off." The nurse's notes indicate that the claimant might need someone to open the door in order for her to vacate. Her notes state that the paragraph addressing vacating was not reviewed during the assessment. The claimant testified that she can never grip the doorknob enough to turn it. She has to call someone when she wants to go out to have them come and turn the doorknob. The Department contends that this assistance would be considered supervision and would not constitute a deficit for vacating. The Department also believed that the claimant was able to fill her own syringe for injections and that this fine motor skill would be similar to what would be needed to turn a doorknob. The claimant however, administers her injections with pre-filled syringes.
- 6) At the time of the assessment, the claimant related to the nurse that she had occasional incontinence with bladder. She testified that the problem has gotten worse since then.
- 7) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS
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.
- 8) Aged Disabled Home and Community-Based Services Manual Section 503.1: MEDICAL ELIGIBILITY
A QIO under contract to BMS determines medical eligibility for the ADW Program.
- 9) 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 members are medically eligible based on current and accurate evaluations.

- B. Each applicant/member determined to be medically eligible for ADW 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.

10) Aged Disabled Home and Community-Based Services Manual Section 503.2 MEDICAL CRITERIA:

An individual must have five deficits on the Pre-Admission Screening Form (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 to vacate 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. (Item 25 on the PAS 2005).

- a. Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- b. Bathing ----- Level 2 or higher (physical assistance or more)
- c. Grooming--- Level 2 or higher (physical assistance or more)
- d. Dressing ---- Level 2 or higher (physical assistance or more)
- e. Continence-- Level 3 or higher; must be incontinent
bowel
- f. Continence-- Level 3 or higher; must be incontinent
bladder
- g. Orientation-- Level 3 or higher (totally disoriented, comatose)
- h. Transfer----- Level 3 or higher (one person or two person assist in the home)
- i. Walking----- Level 3 or higher (one person assist 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 The individual is not capable of administering his/her own medications.

11) Aged Disabled Home and Community-Based Services Manual Section 503.4

MEDICAL REEVALUATION:

Annual reevaluations for medical necessity for each ADW member must be conducted.

12) Attachment 14, Pre-Admission Screening, PAS

25. In the event of an emergency, the individual can vacate the building (check only one)
Independently With Supervision Mentally Unable Physically unable

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMI nurse, determined that the claimant had only three qualifying deficits in the areas of eating, bathing and grooming.
- 2) Evidence and testimony provided for this hearing did support that an additional deficit should not have been assessed in the area of dressing. The claimant provided the evaluating nurse with verbal information that supports that she needs help with dressing. The nurse based her decision instead on the fact that the claimant had dressed herself on that day and the fact that she could give herself insulin injections. If the claimant did not need assistance with dressing it is reasonable to believe that she would not routinely remain in her pajamas and housecoat. A deficit should have been assessed for dressing.
- 3) The claimant cannot turn the doorknob to exit her home. The nurse was aware of this at the time of the assessment. Policy in Attachment 14 instructs the evaluating nurse to mark one of the following: independently, with supervision, mentally unable or physically unable. It does not provide an option of needing or not needing hands on assistance. The nurse marked (with supervision). Supervision alone would not get the door open for this claimant to vacate through. The act of administering insulin injections would not require gripping strength similar to that needed to turn a doorknob. She is physically unable to open her door and therefore should have been assessed as being physically unable to vacate in the event of an emergency.
- 4) The evaluating nurse correctly assessed bladder incontinence at the time of the PAS. This problem has only increased since the date of the PAS. The Department should have assessed a deficit in the areas of dressing and vacating. The addition of these two deficits would complete the five deficits required for medical eligibility.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was incorrect in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **reverse** the Department's action to terminate this claimant's services under the Aged Disabled Title XIX (HCB) Waiver program.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of June 2008.

**Sharon K. Yoho
State Hearing Officer**