



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 29, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 22, 2008. 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 503]

Information submitted at your hearing reveals that you meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** 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
BoSS
WVMI
CCIL

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

_____,
Claimant,

v.

Action Number: 08-BOR-1131

**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 August 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 August 22, 2008 on a timely appeal filed March 25, 2008 and received by the Hearing Officer on April 16, 2008. The hearing was originally scheduled for June 26, 2008, but was rescheduled at the request of the Department.

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:

[REDACTED], Claimant
[REDACTED] RN, Case Manager, Coordinating Council for Independent Living
[REDACTED] RN, [REDACTED] County Senior Center
[REDACTED] Homemaker, [REDACTED] County Senior Center
[REDACTED] Advocate, West Virginia Advocates

Telephonic participants

Kay Ikerd, RN, Bureau of Senior Services
Betsy Carpenter, 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. 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 503, 503.1, 503.1.1 and 503.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 503
- D-2 Pre-Admission Screening (PAS) completed on January 24, 2008
- D-3 Notice of Potential Denial dated January 28, 2008
- D-4 Denial notice dated February 13, 2008

Claimant's Exhibits:

- C-1 Information from Dr. [REDACTED] dated February 8, 2008
- C-2 Letter from _____ and _____
- C-3 Letter from _____
- C-4 Letter from Dr. [REDACTED] dated June 4, 2008
- C-5 PAS assessments completed for Claimant in 2004, 2005, 2006 and 2007

VII. FINDINGS OF FACT:

- 1) The Claimant, who has been diagnosed with schizophrenia, is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical reevaluation to determine if he continues to meet medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on January 24, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified four (4) qualifying deficits for the Claimant in the areas of physical assistance with eating, grooming and dressing, and inability to vacate the building in the event of an emergency.
- 3) The Claimant was sent a Notice of Potential Denial on January 28, 2008 (D-3) and was advised that he had two weeks to submit additional medical information for consideration. Additional information was submitted, however the documentation failed to change the PAS findings.
- 4) The Claimant was sent a final denial notice on February 13, 2008 (D-4).
- 5) During the hearing, the Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Incontinence of bladder and bowel- The Claimant's Case Manager testified that the Claimant is frequently incontinent of bladder/bowel on a daily basis. Though there may be times when he experiences no accidents, the Claimant's bed linens are frequently soiled. The ██████████ County Senior Center Nurse, who has worked with the Claimant for 16 years, testified that she has viewed written homemaker documentation over the years indicating that the Claimant's bed linens are changed frequently due to incontinence and feces has been cleaned from his clothing before it could be laundered.

While the Claimant reported occasional bladder/bowel incontinence during the assessment, the Case Manager and Senior Center Nurse (both of whom were present during the assessment) had informed the WVMI Nurse that the Claimant is incontinent "several times a week." Dr. ██████████ had provided written documentation (C-1) to the Department in February 2008 indicating that the Claimant has been diagnosed with incontinence of both bladder and bowel. The Claimant's former homemaker, ██████████ had also provided written documentation dated February 1, 2008 (C-2) which states, in part, "I am there everyday. I usually have to clean bathroom & toilet everyday, and change his bed linen too." The Claimant's witnesses testified that he is a proud man who would likely understate the frequency of his incontinence.

The additional documentation from Dr. ██████████ and the former homemaker was submitted to the Department in response to the Notice of Potential Denial, however the WVMI Nurse indicated the information did not change the PAS findings because the physician did not specify the frequency of incontinence and the Claimant had only admitted to occasional incontinence during the assessment.

Exhibit C-4, a letter from Dr. [REDACTED] dated June 4, 2008, reiterated the Claimant's incontinence diagnosis, although it did not specify the frequency of incontinent episodes.

Based on information provided during the hearing, one (1) additional deficit is awarded for incontinence of bladder and bowel. While the Claimant's physician did not specify a frequency of incontinence, his Case Manager indicated that he frequently experiences incontinence on a daily basis. PAS comments indicate that the Claimant's representatives told the WVMi Nurse the Claimant is incontinent "several times a week" and his former homemaker (who provided care at the time of the assessment) wrote that she frequently changed his bed linens due to incontinence.

Physical assistance with bathing- During the assessment, the Senior Center nurse said the Claimant's homemakers have reported assisting him with bathing on a daily basis. The Claimant denied needing assistance with his showers and denied that his brother assists him with bathing on weekends. During the hearing, the Case Manager indicated that the homemaker helps the Claimant prepare for his bath, but has not reported that she physically assists the Claimant with bathing. Dr. [REDACTED] letter of June 4, 2008 states that the Claimant requires assistance with bathing, but does not specify whether the Claimant needs physical assistance to wash or physical assistance to prepare for his bath. The Claimant was rated at Level 1 (self/prompting) in bathing on the PAS.

Evidence is insufficient to award a deficit for physical assistance with bathing as it is unclear whether the Claimant simply needs assistance with bath preparation or requires physical assistance to wash.

Inability to administer medications- The Claimant's witnesses testified that the Claimant's brother fills his pill box and stores the medication at his home since the Claimant has a history of non-compliance with medication administration. As the Claimant is legally blind, he cannot always locate pills if he drops them on the floor. PAS comments indicate that the Claimant drops his pills frequently.

The WVMi Nurse testified that the Claimant was not awarded a deficit in this area because he can place the pills in his mouth once they are sorted. The Claimant was rated as requiring prompting/supervision with medication administration on the PAS assessment.

As the Claimant is able to take his medication with supervision, the PAS rating of prompting/supervision is correct and no deficit is awarded in this area.

6) 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.

7) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 (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 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. The Claimant was awarded four (4) deficits on his January 2008 Aged/Disabled Waiver Program medical reevaluation.
- 2) As a result of information provided during the hearing, one (1) additional deficit is awarded to the Claimant in the area of bladder/bowel incontinence.
- 3) The required deficits have 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 **reverse** the Agency's proposal to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The additional deficit awarded by the Hearing Officer should be considered when determining the Claimant's Level of Care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of August, 2008.

**Pamela L. Hinzman
State Hearing Officer**