



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 19, 2008

Dear Ms. _____

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 15, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to deny services under the Aged Disabled Waiver 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 A/DW 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 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the February 25, 2008 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to deny services under the A/DW program.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review WVMI
BOSS

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

Claimant,

Action Number: 08-BOR-1192

**v.
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 15, 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 15, 2008 on a timely appeal filed April 24, 2008. Please note that this hearing was previously scheduled on June 19, 2008; July 17, 2008; and August 17, 2008 but rescheduling was required at the request of the Bureau of Senior Services.

It should be noted here that the claimant's benefits have been denied 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's Witnesses:
_____ – Claimant

Department's Witnesses:
Kay Ikerd, RN – Bureau of Medical Services
Debra Lemaster, RN – West Virginia Medical Institute

Presiding at the Hearing was Melissa Hastings, State Hearing Officer and a member of the State Board of Review.
All parties participated telephonically

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 §503**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community based Services Manual §503.1 and 503.2.
- D-2 Pre-Admission Screening, PAS, completed February 25, 2008.
- D-3 Medicaid Aged & Disabled Waiver Program Medical Necessity Evaluation dated January 23, 2008
- D-4 Notice of potential denial dated February 27, 2008
- D-5 Notice of denial dated March 18, 2008

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant is a 61 year-old female. She is an applicant for the A/DW program. Her A/DW eligibility was undergoing an initial evaluation on February 25, 2008.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant and her daughter. The evaluating nurse determined that the claimant had only four (4) qualifying deficits. She assigned a

deficit for claimant's need for physical assistance in bathing, grooming, dressing and ability to vacate the building.

- 3) The primary diagnoses listed on the Pre-Admission Screening (D2) were NIDDM, hypertension, morbid obesity, osteoarthritis and hyperlipidemia.
- 4) Three areas of disagreement were indicated by the claimant during the hearing. The areas of disagreement were decubitus, bladder continence and bowel continence.
- 5) The Pre-Admission screening form page 4 of 9 section 24 (D2) indicates there was no decubitus present at the time of the assessment. Claimant denied any type of bedsore at time of assessment but during the hearing indicated she did have a healing bedsore.
- 6) The Pre-Admission screening form page 4 of 9 section 26e (D2) indicates that claimant was assessed as a level 1 Continent for the bladder based on claimant's statement denying incontinence. Claimant acknowledges that she did tell the evaluating nurse that she had no problems with bladder incontinence but that she was too embarrassed to discuss her problem with the nurse. Claimant's testimony indicates that she had surgery a few years back and as a result she has a leaking issue due to an indentation caused by the surgery. She may urinate but on the way back from the bathroom may release or leak a small amount of urine. The department's representative indicates that the term for his problem is secondary voiding. There is no problem with the individual's bladder that is causing the incontinence but a structural problem. Claimant acknowledges she does know she has to urinate and does feel she has completely urinated but some of the urine remains in her body and is expelled later as a leak.
- 7) The Pre-Admission screening form page 4 of 9 section 25f (D2) indicates that claimant was assessed as a level 2 occasional incontinent in the area of bowel continence. At the time of the evaluation the claimant told the evaluating nurse that she had episodes of bowel incontinence two to three times per week. Claimant indicates through her testimony that this situation remains the same. The Department's representative indicates that the definition of occasional incontinence as found in the policy manual is less than three times per week. Because the claimant stated her incidences of bowel incontinence occurred two to three times per week she was considered to meet that definition.
- 8) 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.

- 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 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.

10) Aged/Disabled Home and Community-Based Services Manual Section 503.2 – Medical Criteria:

An individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

#24 Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

#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. 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 – 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. (Item 26 on the PAS 2005)

#28 The individual is not capable of administering his/her own medications.

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 assigned the claimant four (4) qualifying deficits in the areas of bathing, grooming, dressing and ability to vacate the building.
- 2) The issues raised at the hearing were in the areas of decubitus, bowel and bladder continence.
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on February 25, 2008.
- 4) Evidence and testimony admitted during this hearing reveal that in the contested area of decubitus the evaluating nurse properly determined that claimant had no decubitus present at the time of assessment.
- 5) Evidence and testimony admitted during this hearing confirm that the assessment of a level 1 Continent in the area of bladder continence was properly determined by the evaluating nurse based on the statements she received from the claimant at that time. Testimony during this hearing indicates that the claimant may have issues concerning bladder continence that could be more thoroughly explored during a future assessment if claimant ever reapplies for benefits.
- 6) Evidence and testimony admitted during this hearing confirm that the assessment of a level 2 Occasional Incontinence in the area of bowel continence was appropriately assigned by the evaluating nurse. Policy defines occasional incontinence as less than 3 times per week. In this situation claimant states her episodes of bowel incontinence occur two to three times per week. When averaged this would be less than three times per week.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, the Hearing Officer finds that the evaluating nurse properly assessed the claimant with four (4) deficits in the areas of bathing, grooming, dressing and ability to vacate the building. Policy requires five (5) deficits to be eligible for services under the Aged/Disabled Waiver Program. The department's action to deny services through the Aged/Disabled Policy is **upheld**.

X. The RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of August, 2008.

**Melissa Hastings
State Hearing Officer**