



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 21, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 19, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through 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]

The information submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged & Disabled Home & Community Based Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services through the Medicaid Aged & Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
Family Services of [REDACTED]
WVMI

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

_____,
Claimant,

v.

Action Number: 08-BOR-1284

**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 21, 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 originally scheduled on July 22, 2008 but was rescheduled at the request of the Department and convened on August 19, 2008 on a timely appeal filed April 15, 2008.

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, Family Services of [REDACTED]
[REDACTED] Homemaker, Family Services of [REDACTED]
Kay Ikerd, RN, BoSS
Stacy Leadman, RN, WVMI

Presiding at the hearing was Thomas E. Arnett, 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 decision to propose termination of the Claimant's benefits and services provided through the Medicaid Aged & Disabled Home and Community-Based Waiver Services 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) assessment completed on March 17, 2008
- D-3 Notice of Potential Denial dated March 26, 2008
- D-3a Correspondence from The Family Service of [REDACTED] Counties (dated 4/25/08) accompanied by a letter from Dr. [REDACTED] M.D. dated 4/15/08.
- D-4 Notice of Termination/Denial dated April 10, 2008

VII. FINDINGS OF FACT:

- 1) On March 17, 2008, the Claimant was evaluated (medically assessed) to determine continued eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on 3/17/08}.

- 2) On or about March 26, 2008, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2.

Based on your PAS you have deficiencies in only 3 areas – Bathing Grooming and Dressing.

This notice goes on to advise the Claimant – “If you believe you have additional information regarding your medical conditions that wasn’t considered, please submit those records to WVMi *within the next 2 weeks*. Any additional information submitted within this timeframe will be considered before a final determination is made.”

Exhibit D-3a was received April 28, 2008, outside of the 2 week period allowed and will therefore not be considered in this decision.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated April 10, 2008 (Exhibit D-4). This notice states, in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 3 areas – Bathing Grooming and Dressing.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

4) The Claimant and her representatives contend that she should have been awarded a deficit in incontinence (bladder), transferring, walking and vacating the building in the event of an emergency.

- The evidence reveals that the Claimant reported episodes of *bladder incontinence* occurring one (1) or two (2) times every two weeks when she was assessed by the WVMI RN. The Claimant testified during the hearing that she experiences episodes of bladder incontinence no more than two (2) times per week. In order to qualify for a deficit, the individual must experience episodes of incontinence three (3) or more times per week. Pursuant to the standards set forth in policy, the Claimant does not qualify for a deficit in the area of bladder incontinence.

- The assessed levels of walking and transferring were questioned by RN Hammond at the hearing but there was no evidence presented to contradict the findings on the PAS assessment. The Claimant was observed by the WVMI RN walking with her walker and transferring without physical assistance. The Claimant testified that she doesn't use her walker all the time and that she transfers herself in and out of her chair. The Claimant clearly has difficulty with ambulation and therefore requires supervision/assistive device (level 2), however, there was no evidence presented to indicate the Claimant requires hands-on physical assistance with transferring and/or walking. Based on the evidence, the Claimant does not qualify for a deficit in transferring or walking.

- The Claimant's daughter participated in the medical assessment completed on the Claimant on March 17, 2008 and according to testimony presented at the hearing, the Claimant's daughter is employed as a Certified Nurses Aid. When reviewing the Claimant's ability to *vacate her home in the event of an emergency*, both the Claimant and her daughter reported that the Claimant could vacate with the use of her walker. Additional documentation reveals that the Claimant goes outside with her walker and can do this without any difficulty or need for assistance. It was also reported that the Claimant could wheel herself outside if needed as she lives on the first floor of an apartment building and her apartment is approximately 30 feet from the entrance. It should also be noted that the Claimant was assessed at a level 2 (Supervised/Assistive Device) in transferring, walking and wheeling. These findings are consistent with the Claimant's assessed ability to vacate by WVMI. Based on the evidence, the Claimant does not demonstrate a deficit in vacating the building in the event of an emergency.

5) 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.

- 6) 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.
- 7) 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 can vacate the building:
 - a) Independently, b) with supervision, c) mentally unable or d) physically unable to vacate a building. Vacating Independently or with Supervision are not considered a deficit.
 - #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 states that an individual must have five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded three (3) deficits on a PAS assessment completed by WVMi on March 17, 2008 – Bathing Grooming and Dressing.
- 3) The evidence submitted at the hearing fails to identify any additional deficits.
- 4) Whereas the Claimant demonstrates three (3) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency’s proposal to terminate the Claimant’s benefits and services through the Medicaid, 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 21st Day of August, 2008.

**Thomas E. Arnett
State Hearing Officer**