



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St
Charleston, WV 25313
304-746-2360 Ext 2227

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 3, 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' proposal to terminate your benefits and services through the Aged & Disabled (HCB) Title XIX Waiver Services 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 (HCB) Services Manual Section 503).

The information which was submitted at your hearing revealed that your medical condition requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearings Officer to reverse the proposed decision of the Department to terminate your benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Jennifer Butcher
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS RN
CWVAS

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

_____,

Claimant,

v.

Action Number: 08 -BOR-1313

**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 November 3, 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 April 26, 2008.

It should be noted here that the claimant's benefits has 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

_____, Central West Virginia Aging Service (CWVAS), Homemaker RN

_____, Homemaker for Claimant

Kay Ikerd, Bureau of Senior Services (BoSS), RN

Paula Clark, West Virginia Medical Institute, (WVMI)

Presiding at the Hearing was Jennifer Butcher, State Hearing Officer and a member of the State Board of Review.

It should be noted that all participated by phone.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Agency was correct in its decision to propose termination of the Claimant's benefits and services 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 Pre-Admission Screening (PAS) completed on March 31, 2008
- D-2 Notice of Potential Denial dated April 1, 2008
- D-3 Additional Medical Information from Sissonville Family Medicine stamped, dated April 11, 2008
- D-4 Notice of Termination/Denial dated April 18, 2008
- D-5 Hearing request dated April 26, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant completed her Pre-Admission Screening (PAS) re-evaluation on March 31, 2008 that resulted in the determination that the Claimant is no longer medically eligible to participate in the Medicaid Aged & Disabled Waiver Services Program.
- 2) On or about April 1, 2008, the Claimant was notified of Potential Denial (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. (See attached criteria).

Based on your PAS you have deficiencies in only four (4) areas Vacate a Building, Bathing, Grooming, and Dressing.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

- 3) This notice goes on to advise the Claimant that he can provide additional information regarding his medical condition within two (2) weeks for consideration before a final

decision is made. However, if no additional information is received within two (2) weeks from the date of the notice, he will be sent a denial notice.

- 4) A statement initialed by "DW MD" from [REDACTED] Family Medicine dated April 1, 2008, stating "unable to cut food due to OA", was submitted as additional medical information; Exhibit D-3.
- 5) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated April 18, 2008 Exhibit D-5. 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 four (4) areas – Vacate a Building, Bathing, Grooming, and Continence.

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

- 6) The Claimant contends that in addition to the four (4) deficits awarded by the Department, she should have also been found deficient in Eating.

Eating – In order to qualify for a deficit in eating, the individual must require physical assistance. The Claimant reported during the assessment that he is unable to cut his food. The Homemaker RN testified that the Claimant can not cut up his food due to the arthritis in his hands. She also stated after the assessment was completed the Claimant told her he did not eat things that needed to be cut very often. The Claimant stated during his testimony that he has short term memory loss and has difficulty answering questions correctly. It was documented in the assessment the Claimant suffers from short term memory loss due to a Traumatic Brain Injury. The WVMi RN indicated in her report and testified during the hearing that she assessed the strength in the Claimant's grips as being "weak bilaterally". The homemaker reported when the Claimant does eat foods that are tough and hard to chew, she would cut the food up so he would be able to chew and swallow his food. A question was asked by the Bureau of Senior Services Nurse, (herein after BoSS RN) as to why this was not brought to the attention of the WVMi RN the day of the assessment? The Homemaker RN assumed that since the WVMi RN observed the weak grips, this deficit was going to be awarded. By the testimony and evidence provided the deficit for eating will be awarded.

- 7) 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.
- 8) 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.
- 9) 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 is 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: (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 four (4) deficits on a PAS assessment completed by WVMI in November, 2007 for Vacating, Bathing, Grooming, and Dressing.
- 3) The evidence submitted at the hearing identifies one (1) additional deficit for Eating.
- 4) The Claimant has established five (5) program deficits; this qualifies for the continued medical eligibility for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's benefits and services through the Medicaid, Aged/Disabled, Title XIX, (HCB) Waiver.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of November, 2008.

**Jennifer Butcher
State Hearing Officer**