



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

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

November 3, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 7, 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 submitted at your hearing revealed that your medical condition no longer requires the 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 uphold the Department's proposal 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
BoSS
WVMI
All Care Home & Community

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

_____,

Claimant,

v.

Action Number: 08-BOR-1373

**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 convened on August 7, 2008, on a timely appeal, filed May 5, 2008.

It should be noted here that the Claimant's benefits 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.

III. PARTICIPANTS:

_____, Claimant
_____, Case Manager, All Care Home & Community
_____, Homemaker
_____, All Care Home & Community, Intern observing
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.

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
- D-2 Pre-Admission Screening (PAS) completed on April 9, 2008
- D-3 Notice of Potential Denial dated April 11, 2008
- D-4 Additional information provided by Dr. _____, M.D. dated April 24, 2008
- D-5 Notice of Termination/Denial dated April 28, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant's appeal was filed on May 5, 2008 following a Pre-Admission Screening (hereinafter PAS) medical assessment completed on April 9, 2008 that resulted in the determination that the Claimant is no longer medically eligible to participate in the Medicaid Aged & Disabled Waiver Services Program. A statement, Exhibit D-4, from Dr. _____ was submitted as additional information regarding her medical conditions. This information consisted of current medications and diagnoses that were documented in the PAS by the West Virginia Medical Institute Registered Nurse (hereinafter WVMI RN). The final denial was issued on April 11, 2008. The Claimant's hearing convened on August 7, 2008.
- 2) On or about April 11, 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. See attached criteria.

Based on your PAS, you have deficiencies in only three (3) areas: Vacating a Building, Dressing, and Continence.

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

This notice goes on to advise the Claimant that she can provide additional information regarding her 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, she will be sent a denial notice.

- 3) The Homecare Agency submitted additional documentation from Dr. [REDACTED] M.D. dated April 24, 2008, Exhibit D-4, indicating her most current medication and her medical history.
- 4) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated April 28, 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 3 areas : Vacating a Building, Dressing and Continence.

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

- 5) The Claimant contends that, in addition to the three (3) deficits awarded by the Department, she should have been awarded deficits in Bathing and Grooming.

Bathing- In order to qualify for a deficit in bathing, the individual must require physical assistance. The Claimant testified she could bathe herself, but can not reach around and wash her back. The homemaker washes her back twice a week while she is working in the home; otherwise her back is not washed. According to the WVMi RN documentation and testimony reveals the Claimant needs assistance with parts of her bathing. The WVMi RN acknowledged in the PAS the Claimant needs assistance with part of her bathing, therefore a deficit should be given.

Grooming- In order to qualify for a deficit in grooming, the individual must require physical assistance. The Homemaker RN indicated the Claimant should be awarded the deficit of Grooming. She stated the Claimant can wash her own hair, but sometimes the homemaker will wash it for her. The WVMi RN referred to the April 9, 2008, PAS, Exhibit D-2, and reiterated that the Claimant was able to wash her own hair and the homemaker would help her about every two weeks. According to the definition of what is needed for establishing a deficit, the Claimant is able to perform this task on her own. The homemaker is not required to assist the Claimant with this activity, but does assist her out of kindness about every two weeks. Therefore, a deficit was not awarded in this area.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 503 (D-1) Program Eligibility for Client states:
- 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 – 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 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:
(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 in April, 2008, Vacating a Building, Dressing, and Continence.
- 3) The evidence submitted at the hearing confirms that an additional deficit is demonstrated in Bathing.
- 4) Whereas the Claimant demonstrates four (4) 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 3rd Day of November, 2008.

**Jennifer Butcher
State Hearing Officer**