



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 7, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 31, 2008. Your hearing request was based on the Department of Health and Human Resources' decision 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 by having five (5) qualifying deficits 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 July 31, 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 action of the Department to deny services under the Aged/Disabled Waiver Program.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN, BOSS
Oretta Kinney, WVMI

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

_____ **Claimant,**

Action Number: 08-BOR-1395

**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 July 31, 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 31, 2008 on a timely appeal filed June 9, 2008.

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 by phone

Angie Hill, 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 appeared telephonically.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in their decision to deny services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §500**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §503.0 through 503.2.

D-2 Pre-Admission Screening, PAS, completed April 21, 2008

D-3 Medicaid Aged & Disabled Waiver Program Medical Necessity Evaluation dated March 11, 2008

D-4 Notice of potential denial dated April 22, 2008

D-5 Notice of denial dated May 7, 2008

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

1) _____ is a 40 year-old male. He is an applicant for the A/DW program. Mr. _____'s A/DW eligibility was undergoing an initial evaluation on April 21, 2008.

2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant and his homemaker from CWVAS. The evaluating nurse determined that the claimant had zero (0) qualifying deficits.

- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was BiPolar Disorder/Schizophrenia and asthma.
- 4) Testimony received from the Claimant indicates that he disputes the findings in the areas of walking and bladder continence.
- 5) The Pre-Admission Screening form page 2 of 6 section 25i (D2) indicates that claimant was assessed as a level 1 Independent in the area of walking. Claimant indicates that he cannot walk in flat shoes as they hurt his feet. Must use heels to walk comfortably.
- 6) The Pre-Admission Screening form page 2 of 6 section 25e (D2) indicates that claimant was assessed as a level 2 Occasional Incontinent. During the assessment in April 2008 the Claimant advised the evaluating nurse that he had accidents with his bladder twice in the past week. During testimony received in this hearing the Claimant indicates these accidents have increased to three (3) to four (4) times per week.
- 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 the state.
- 9) 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

#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. Dressing ---- Level 2 or higher (physical assistance or more)
- d. Grooming--- Level 2 or higher (physical assistance or more)
- e. Continence,-- Level 3 or higher; must be incontinent bowel
- f. Continence-- Level 3 or higher; must be incontinent
- 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: (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations.

#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 zero (0) qualifying deficits.
- 2) The issues raised at the hearing were in the areas of walking and bladder incontinence.
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on April 21, 2008.
- 4) Evidence and testimony admitted during this hearing confirm that in the contested area of walking, the evaluating nurse properly determined that claimant walks independently.

- 5) Evidence and testimony admitted during this hearing confirm that in the contested area of bladder continence, the evaluating nurse properly determined that the claimant had occasional bladder incontinence. Based on the testimony received from the Claimant during this hearing, it appears his condition has changed since the time of his assessment but at the time of assessment he was properly evaluated.

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 zero (0) deficits on the Pre-Admission Screening Form in April 2008. Policy requires five (5) deficits to be eligible for services under the Aged/Disabled Waiver Program. The department's decision 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 7th Day of August, 2008.

Melissa Hastings
State Hearing Officer