



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 21, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 9, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of your medical eligibility under 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]

Information submitted at your hearing reveals that you do meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to deny your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
First Care Services

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

_____,
Claimant,

v. **Action Number: 08-BOR-1400**

**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 9, 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 9, 2008 on a timely appeal filed May 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:

_____, Claimant
_____, Case Manager, First Care Services
_____, Claimant's brother
_____, Claimant's friend and neighbor
_____, Claimant's friend

Kay Ikerd, BOSS - participated telephonically
Traci Gillispie, WVMI, participated telephonically

Presiding at the hearing was Cheryl Henson, State Hearing Officer and 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 proposal to deny benefits under the Aged/Disabled Home and Community-Based Waiver 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 April 22, 2008
- D-3 Notice of Potential Denial dated April 23, 2008
- D-4 Notice of Denial dated May 8, 2008
- D-5 Request for Hearing form

Claimant's Exhibits:

- C-1 Letter from Dr. _____ dated May 6, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for eligibility under the Title XIX Aged and Disabled Waiver Program during the month of April 2008.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on April 22, 2008 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified the Claimant received one (1) deficit on the Pre-Admission Screening (PAS) assessment in the area of grooming.
- 3) The Department sent a Notice of Potential Denial (D-3) on April 23, 2008 addressed to First Care Services, Inc. in [REDACTED] WV advising that the Claimant had two weeks to submit additional medical information for consideration by WVMI. No additional information was submitted. No evidence was provided to show the Claimant received a copy of this notice.
- 4) WVMI denied the Claimant, and the Claimant requested a hearing (D-5) on May 12, 2008. The Department received the request on May 15, 2008.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Vacating a Building: The Claimant was rated as being able to vacate a building in the event of an emergency “independently”. The WVMI nurse recorded the following on the PAS:

Applicant reported that he could vacate in an emergency independently. I asked him has he ever had to go down the steps. He stated yes and that he can go down the steps easier than coming up them. Applicant reports his building has fire drills every 2-3 months for which he has to exit using the steps and does so by holding onto the railing.

The Claimant testified that he lives on the eighth floor of an apartment building and he would not be able to evacuate the building in an emergency without assistance. He presented evidence (C-1) from his physician which supports that he has significant memory problems and gets easily confused, has poor vision, and suffers from arthritis in the knee, leg, thigh, hips and shoulders. He also has coal worker’s pneumoconiosis, chronic obstructive pulmonary disease, hypertension, severe type II diabetes mellitus, and diabetic peripheral neuropathy. Witnesses for the Claimant indicate that he “never” leaves the building during the fire drills, and that he could not evacuate in an emergency without hands on assistance. The Claimant had no one with him during the assessment.

Eating, which is under Functional Abilities: The Claimant was assessed as needing self/prompting. The WVMI nurse recorded the following information on the PAS:

Applicant reports he feeds himself independently. I observed him use his hands to sign the consent form, remove a bowl containing his Rx bottles from a gun cabinet, put on his glasses, open and close his front door and heard him lock the deadbolt as I left, put on his socks and shoes, and

turn on the light by a switch. Applicant denies having any difficulty in using eating utensils. Applicant denies needing assistance with cutting up his food. Stated "I am good at using a knife, I have carried on since I was 4 years old." Applicant reported that he prepares himself easy meals....such as frying eggs or bacon. Applicant reports he can peel apples and cut them up himself....also states he cooks apples...stated he stopped cooking potatoes d/t his DM. Applicant added that he could cut up an apple with his eyes closed because he was so good with using a knife. Applicant's grips were equal and strong.

The Department's witnesses testified that in their opinions the Claimant cannot cut up his own food. He cannot see to do this, and is very messy when he eats due to his sight and gets food everywhere. They stated he could eat food once it is cut up for him however. The Claimant testified he cannot cut up his own food but can eat it once someone cuts his meats. He stated that food sometimes falls out of his mouth, and he thinks this may be due to a possible stroke. He stated that he could not hear the nurse throughout the assessment and sometimes what she was saying came out sounding "garbled".

Dressing, which is under Functional Abilities: The Claimant was rated as needing self/prompting. The WVMI nurse recorded the following on the PAS:

Applicant reported he was getting dressed when I phoned him just prior to my arrival. He was wearing a T-shirt and pants with a button and zipper. I also observed the applicant prop his feet up to the opposite knee and put on his socks without difficulty. He also bent over while sitting on his couch and picked up his shoes from the floor and put them on and then attached the Velcro straps – without difficulty. States this is harder to do with his right leg this way and has to pull it up with his hands...this d/t hx of knee surgery and injury...I also observed him do this without significant difficulty. Applicant denies ever having his HM to assist him with dressing.

The Claimant testified that he has problems with shoes and socks due to stiffness and pain in his back. Witnesses for the Claimant testified that he has problems getting shoes on due to stiffness and he cannot put shoes on. They also indicated they had all seen him with clothes improperly buttoned, lop-sided, and dirty at times because he cannot see what he is doing.

Administering Medications: The Claimant was rated as being able to administer his

own medications. The WVMi nurse recorded the following on the PAS:

Applicant reported he draws up his insulin and gives the injections himself...states he is able to do this because in the morning he knows to draw up the full syringe for 100 units and then in evening can tell to draw up 10 more units – denies his visual impairment affecting his ability to draw up and give the insulin. Applicant reported he takes his other meds directly from the Rx bottles daily...states he takes 5 meds in the morning and 3 at night – this includes his ASA. Applicant denies forgetting to take them. States he takes one medication at a time, then sits it over to the side, so that he can keep track of what he has already taken...denies having difficulty in taking his meds d/t his eyesight. States he has taken his meds by this system for years. Also has markings on a few of his meds to let him know how many to take.

The Claimant testified that when he has to take his insulin and other medications himself he has made mistakes. Witnesses for the Claimant testified that they help him draw the insulin everyday and arrange his pills for him, but they always found pills in the floor where he has dropped them and cannot tell if he has taken the correct dosage or not. The physician's letter (C-1) indicates the Claimant has "significant memory problems and gets easily confused," and "without the help and assistance he needs I fear his health would deteriorate and become life threatening."

Bowel Incontinence, which is under Functional Abilities: The Claimant was rated as being "continent". The WVMi nurse recorded the following on the PAS:

Applicant reported "a time or two" of having bladder incontinence...denies this occurring daily or weekly...stated he has had only 2 episodes of bladder incontinence in the last 6 months. Applicant denies having any bowel incontinence...stated "I've never had none yet."

Witnesses for the Claimant testified that they have had to clean the Claimant's clothing weekly due to bowel incontinence and this happens two or three times a month. The commode was in "bad shape" when cleaned. The Claimant stated this happens about two or three times a month, sometimes more and sometimes less.

6) 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.
- 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 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

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 dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received one (1) deficit in April 2008 in conjunction with his Aged/Disabled Waiver Program re-evaluation.
- 3) The totality of evidence and testimony presented during this hearing support the finding of additional deficits in the area of vacating a building, administering medications, eating and dressing, for a total of four (4) additional deficits.
- 4) The required five (5) deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. I order that the Claimant also be assessed points in relation to the deficits awarded in arriving at a level of care determination.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st day of July, 2008

**Cheryl Henson
State Hearing Officer**