



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 5, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 31, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny your benefits 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 not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

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

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CCIL

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

_____,
Claimant,

v.

Action Number: 08-BOR-1411

**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 5, 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 October 31, 2008 on a timely appeal filed May 21, 2008 and received by the Hearing Officer on June 13, 2008. The hearing was originally scheduled for August 19, 2008, but was rescheduled at the request of the Department. It was then scheduled for September 30, 2008, but was continued at the request of the Department.

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, Coordinating Council for Independent Living
_____, Claimant's neighbor
Kay Ikerd, RN, Bureau of Senior Services
Melody Lehosit, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

It should be noted that all parties participated telephonically.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in its action 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) completed on April 21, 2008
- D-3 Notice of Potential Denial dated April 23, 2008
- D-4 Denial notice dated May 8, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant was an applicant of benefits under the Aged/Disabled Waiver Program and underwent a medical evaluation to determine if he meets medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on April 21, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified one (1) qualifying deficit for the Claimant in the area of inability to vacate the building in the event of an emergency.

- 3) The Claimant was sent a Notice of Potential Denial on April 23, 2008 (D-3) and was advised that he had two weeks to submit additional medical information for consideration.
- 4) The Claimant was sent a final denial notice on May 8, 2008 (D-4).
- 5) The Claimant and his witnesses contested the PAS findings in the following areas from which deficits can be derived:

Physical assistance with bathing and grooming- The Claimant's neighbor testified that she assists him with washing his back and hair as steam from the shower weakens him. The PAS indicates that the Claimant has been diagnosed with Chronic Obstructive Pulmonary Disease and Hypoxic Respiratory Failure.

PAS notes state that the Claimant reported sitting on a lawn chair in the shower to bathe and said his neighbor helps him every evening to wash his back. He reported that his neighbor combs his hair when she washes it every other day and that she trims his toenails/fingernails.

The WVM Nurse testified that she did not award deficits in these areas because the Claimant demonstrated a good range of motion in his arms, taking off his ball cap twice during the assessment (once with each hand). She testified that the Claimant was able to touch his toes with ease while sitting and had full use of his legs. The nurse contended that the Claimant demonstrated physical mobility and the ability to bathe independently. In addition, the nurse testified that the Claimant was able to smooth back his hair independently with each hand and had demonstrated good finger dexterity when attending to his nebulizer treatments. He had reported that he uses scissors to open his nebulizer treatments and hook up the machine, and demonstrated arm, hand and finger range of motion sufficient for grooming.

As it is reasonable to believe that the Claimant's breathing problems make the processes of bathing and hair washing difficult when in a hot shower, one (1) additional deficit is awarded for physical assistance with bathing and one (1) additional deficit is awarded for physical assistance with grooming. While the Claimant demonstrated a good range of motion during the assessment, testimony reveals that his bathing/grooming difficulties are primarily related to shortness of breath as opposed to mobility.

Physical assistance with eating- The Claimant's neighbor testified that she cuts his foods. The Claimant had also reported receiving this type of assistance during the assessment.

The WVM Nurse testified that the Claimant had attended to his portable oxygen tank and signed a consent form without difficulty during the assessment. In addition, she observed him open a child-proof medicine cap and button/unbutton his shirt without difficulty. He reported using scissors to cut open his nebulizer treatments several times per day. However, the nurse testified that the Claimant barely gripped her fingers when asked to squeeze her hand. She said that he did not squeeze her hand with the minimum force required to open a door and pull his oxygen tank down the hall as he had demonstrated during the assessment. The nurse alleged that the Claimant had purposely used a light grip to squeeze her hand since he was able to perform more strenuous tasks without difficulty. The Department contended that the Claimant's neighbor cuts his food as a courtesy.

Based on the nurse's observations of the Claimant's abilities, no deficit can be awarded for physical assistance with eating as the Claimant demonstrated sufficient hand/finger use to cut his own food.

Physical assistance with dressing- The Claimant's neighbor testified that she assists him with dressing. PAS notes indicate that the Claimant had reported receiving assistance from his neighbor each night to get undressed.

The WVM Nurse described the numerous mobility/range of motion activities the Claimant performed during the assessment, indicating that he possesses the physical ability to dress independently.

Based on the nurse's reported observations of the Claimant's abilities – including buttoning/unbuttoning his shirt and opening a child-proof medicine cap- no deficit can be awarded for physical assistance with dressing.

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 (D-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. The Claimant was awarded one (1) deficit on his April 2008 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, two (2) additional deficits are awarded to the Claimant for physical assistance with bathing and grooming, bringing the Claimant's total number of deficits to three (3).
- 3) The required deficits have not 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 **uphold** the Agency's action to deny the Claimant's medical eligibility under the 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 5th Day of November, 2008.

**Pamela L. Hinzman
State Hearing Officer**