



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

March 20, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 13, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate 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 meet 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 terminate 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
CWVAS
Mary McQuain, Esq., Office of Attorney General
[REDACTED] Esq., Legal Aid of West Virginia

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

_____,
Claimant,

v.

Action Number: 07-BOR-1476

**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 March 20, 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 March 13, 2008 on a timely appeal filed May 23, 2007. The hearing was originally scheduled for July 24, 2007, but was rescheduled at the request of the Department. It was then scheduled for September 12, 2007, but was rescheduled at the request of the Department. The hearing was rescheduled for November 7, 2007, but was rescheduled pending the completion of a new PAS assessment. The new PAS was ordered as a result of the unavailability of the West Virginia Medical Institute nurse who completed the original PAS on which the proposed termination was based.

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
_____, daughter of Claimant
_____, care provider, MountainCap
_____, RN, MountainCap
_____, Case Manager, Central West Virginia Aging Services
_____, Esq., Legal Aid of West Virginia

Telephonic participants

Angel Khosa, Licensed Social Worker, Bureau of Senior Services
Stacy Holstine, RN, West Virginia Medical Institute
Mary McQuain, Esq., Office of Attorney General
Penny Jordan, RN, West Virginia Medical Institute (observing)

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

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency is correct in its proposal to terminate 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 Order entered September 28, 2007 regarding new PAS assessment
- D-2 Termination notice dated December 6, 2007 with page 6 of October 23, 2007 PAS
- D-3 October 23, 2007 PAS with updates to November 29, 2007
- D-4 Aged/Disabled Waiver Program Informed Consent and Release of Information
- D-5 Aged/Disabled Home and Community-Based Services Manual Section 503
- D-6 Potential denial notice dated October 29, 2007
- D-7 Hearing/Grievance Record information
- D-8 Hearing Request
- D-9 Termination notice dated May 16, 2007
- D-10 Potential denial notice dated May 1, 2007
- D-11 Medical Necessity Evaluation Request signed February 15, 2007
- D-12 Facsimile transmission from Central West Virginia Aging Services to Dr. _____
- D-13 Fact sheet concerning Flomax capsules and Benign Prostate Hyperplasia

Claimant's Exhibits

C-1 PAS assessment dated October 23, 2007

C-2 Letter from Dr. [REDACTED]

VII. FINDINGS OF FACT:

- 1) The Claimant is receiving benefits under the Aged/Disabled Waiver Program and underwent an annual re-evaluation to verify his continued medical eligibility.
- 2) West Virginia Medical Institute (WVMI) Nurse Denise Foster completed a medical assessment on April 12, 2007 and determined that the Claimant does not meet medical eligibility criteria for the program. Because Ms. Foster was unavailable to testify at the hearing due to extended leave from her employment, the Hearing Officer ordered that a new Pre-Admission Screening (PAS) be completed for the Claimant by another WVMI nurse (D-1).
- 3) WVMI Nurse Stacy Holstine completed a new PAS on October 23, 2007 (D-3, C-1) and determined that the Claimant does not meet medical eligibility criteria for the program. Ms. Holstine originally identified three (3) deficits for the Claimant in the areas of physical assistance with eating, bathing and grooming.
- 4) The Claimant was sent a Notice of Potential Denial on October 29, 2007 (D-6) and was advised that he had two weeks to submit additional medical information for consideration. The Claimant submitted additional medical documentation from Dr. [REDACTED] (C-2), which was received by WVMI on November 8, 2007. As a result of this information, one (1) additional deficit was awarded to the Claimant in the area of inability to vacate the building in the event of an emergency. This brought the Claimant's total number of deficits to four (4).
- 5) During the hearing, the Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Dressing- The Claimant's daughter, who has lived next door to the Claimant since 1992 and visits him daily- testified that her father cannot button shirts well and has requested shirts with snaps as a result. She stated that the Claimant misses buttons and puts his belt on backwards. The Claimant, who is legally blind, also testified that he cannot manipulate buttons and sometimes puts his belt on backwards. The MountainCap Nurse testified that the Claimant has reported numbness in his fingers and cannot fasten buttons. She testified that the Claimant either wears snapped shirts or is assisted with buttoning by his homemaker.

The WVMI Nurse testified that the Claimant reported he had dressed himself completely on the date of the assessment. He was wearing a shirt with snaps, denim jeans, tennis shoes and socks on that date. He had reported that he has problems with buttons, but indicated he had buttoned his shirt on the previous day without assistance. PAS comments indicate that the Claimant said his homemaker had not assisted him with buttons during the two weeks

she had been in his home. The final PAS comment indicates that the Claimant “states he has no problems with buttoning.”

As a result of information provided during the hearing, one (1) additional deficit is awarded in the area of physical assistance with dressing. The Claimant reported contradictory information on the date of the assessment concerning his ability to button, however, he indicated during the hearing that he is unable to complete this activity. Credible testimony was provided by the daughter and MountainCap Nurse in support of this contention. In light of the Claimant’s vision problems and finger numbness, it is reasonable to determine that he requires frequent assistance with buttoning.

Bladder incontinence- The MountainCap Nurse testified that the Claimant has informed her he is frequently incontinent of bladder. The Claimant, who reportedly has a prostate disorder, testified that he sometimes experiences incontinence while he is attempting to reach the bathroom. He testified that his accidents occur frequently when he falls asleep on the couch or goes out to get his mail. The Claimant provided inconsistent information, however, concerning the frequency of his bladder accidents. He first indicated that the accidents occur an average of two times per week, but later testified that the accidents occur up to three times per day. He does not wear adult diapers.

The PAS indicates that the Claimant told the WVMi Nurse he has accidents about once a month.

Because the frequency of the Claimant’s bladder incontinence cannot be sufficiently determined due to inconsistencies in testimony- and the Claimant was rated as occasionally incontinent on the PAS- no additional deficit can be awarded in this area.

Inability to administer medications- The Claimant’s daughter testified that the Claimant’s medication is placed into a Dixie Cup by others and that he raises the cup to his mouth when he takes the medicine. She testified that if the Claimant dropped his medication, he would be unable to retrieve it due to vision problems. The Claimant also testified that his medication is placed into a cup and he takes it by placing the cup to his mouth. He testified that he would be unable to locate the pills if he dropped them, and could not find medication bottles or take the pills out of the bottles. The MountainCap Nurse testified that the Claimant’s pills are placed in a cup by his daughter or grandson and placed in a.m. /p.m. cups on the microwave oven.

On the date of the assessment, the Claimant reportedly told the WVMi Nurse that his homemaker and daughter set up his medications and place them in a Dixie Cup. He indicated that he is able to pick up the cup and put the medications into his mouth unassisted. He was rated on the PAS as requiring prompting/supervision with medication administration.

Testimony indicates that the Claimant is unable to open medicine bottles, must have his medication sorted and placed in a cup by others, and would be unable to retrieve his medicine should it be dropped. Because his only contribution to medication administration is picking up the cup and placing the pills into his mouth, he is awarded one (1) additional deficit for medication administration. It is evident that the Claimant’s limitations in this area surpass the level of prompting/supervision. In addition, policy contains no specific

requirement indicating that the Claimant must have medication placed directly into his mouth by others in order to be considered unable to self-medicate.

6) Aged/Disabled Home and Community-Based Services Manual Section 503 (D-5)- 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-5) – 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 was awarded four (4) deficits by the Department in conjunction with his October 2007 Aged/Disabled Waiver Program reevaluation.
- 3) As a result of information provided during the hearing, two (2) additional deficits are awarded in the areas of physical assistance with dressing and inability to administer medication.
- 4) The required 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 terminate 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 20th Day of March, 2008.

Pamela L. Hinzman
State Hearing Officer