



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 28, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 20, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of medical eligibility for services under the Aged Disabled Waiver, ADW 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 ADW 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 but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged Disabled (HCB) Services Manual 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the April 30, 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 A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Oretta Keeney, WVMI
[REDACTED] Committee on Aging

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

_____,

Claimant,

v.

Action Number: 08-BOR-1542

**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 telephonic fair hearing concluded on August 28, 2008 for _____ on a timely appeal filed May 30, 2008. 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.

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
_____, RN Case Manager, _____ Committee on Aging
_____, Homemaker RN, _____ Support Services

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services
Barbara Plum, WVMI nurse

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

All participants appeared by speakerphone

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 thru 503.4
- D-2 Pre-Admission Screening, PAS, completed April 30, 2008
- D-3 Eligibility Determination dated April 30, 2008
- D-4 Notice of potential denial dated May 9, 2008
- D-5 Notice of denial dated May 27, 2008

VII. FINDINGS OF FACT:

- 1) This Claimant is an 81-year-old female who lives alone in a bottom floor apartment. She has primary diagnoses of Osteoporosis, Diabetes, Arthritis, Severe Back Pain, Neuropathy and Anxiety.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the Claimant's home on April 30, 2008 with the Claimant and her daughter present. The nurse determined from observation and the answers given to her at the assessment that only three qualifying deficits could be awarded. Those deficits were in the areas of bathing, grooming and vacating.

- 3) The Claimant's witnesses introduced issues in the areas of bladder incontinence, dressing and walking.
- 4) The Claimant advised the evaluating nurse during the assessment that she would have bladder accidents two times per week when she does not get out of bed and to the bathroom in time. She told the nurse that she uses panty liners. When the nurse went over the completed assessment with the Claimant and her daughter neither objected to the information regarding two bladder accidents per week.
- 5) The case manager testified that the Claimant experiences bladder incontinence three or more times per week. The homemaker RN testified that the Claimant had advised her that she has accidents three or four times per week.
- 6) When asked at the hearing when the accidents were, the Claimant spoke in specific terms and not general terms. She said, "I had one in the morning when I can't get up out of bed. Then I had one in the afternoon and then I had one in the evening." When asked if she wears adult diapers she hesitated and then said yes. When asked what kind she wears, she said pull-ups and said she wears them most of the time.
- 7) The evaluating nurse was told during the assessment that the Claimant can dress herself on the weekends when the homemaker is not there. The Claimant told the nurse that she leaves her shirts buttoned so she does not have to try to button them. The nurse was advised that on days when the homemaker is there, the homemaker helps her dress and she had helped her on the day of the assessment. The nurse watched the Claimant put her shoes on and tie them with difficulty.
- 8) The case manager testified that the Claimant has great difficulty dressing and usually does not wear socks and shoes if the homemaker is not there. She usually wears slippers and nightgowns on days the homemaker is not there to help with dressing. The homemaker RN states that due to her arthritis, the Claimant is unable to bend her knees to put pants on so she does not put pants on.
- 9) Walking was brought up as an issue however, this was not an issue until recently. The Claimant's ability to walk unassisted has changed since the April assessment. She uses a quad cane and wheeled walker as she did in April, but the homemaker now has to assist her. The evaluating nurse observed the Claimant walk around her apartment unassisted during the assessment.
- 10) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS
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.

**11) Aged Disabled Home and Community-Based Services Manual Section 503.1:
MEDICAL ELIGIBILITY**

A QIO under contract to BMS determines medical eligibility for the ADW Program.

**12) 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 members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW 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.

**13) Aged Disabled Home and Community-Based Services Manual Section 503.2
MEDICAL CRITERIA:**

An individual must have five deficits on the Pre-Admission Screening Form (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 to vacate 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. (Item 25 on the PAS 2005).

- a. Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- b. Bathing ---- Level 2 or higher (physical assistance or more)
- c. Grooming--- Level 2 or higher (physical assistance or more)
- d. Dressing ---- 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
bladder
- 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 B (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.

14) Aged Disabled Home and Community-Based Services Manual Section 503.4

MEDICAL REEVALUATION:

Annual reevaluations for medical necessity for each ADW member must be conducted.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy dictates 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, determine that the claimant had only three qualifying deficits in the areas of grooming, bathing and vacating.
- 2) The issue of bladder incontinence was not made clear in this case. There was much discrepancy in the testimony offered by the Claimant and her witnesses. This testimony greatly differed from the information given to the nurse during the assessment. At the assessment, the Claimant said she has two accidents per week when she is getting out of bed and that she wears panty liners. The Claimant at the hearing indicated that she has accidents morning, afternoon and evening and that she wears adult diapers. The Claimant's witnesses say she has three or four accidents per week. There was no testimony regarding soiled laundry, which might have helped to clarify the issue.
- 3) The issue of the Claimant's walking does not need to be addressed as it was stated that the Claimant's walking had deteriorated since the assessment and that on the day of the PAS, the nurse was correct in her assessment.
- 4) Evidence and testimony provided for this hearing did support that an additional deficit should have been assessed for dressing. The Claimant advised the nurse that she leaves shirts buttoned which clearly shows that she is unable to button clothing. The claimant does not get dressed when she has no one to help; she instead leaves slippers and her nightgown on. Her homemaker helps her dress on the days she is there and it is clear that she does this because the Claimant is not able to properly dress without hands on assistance. One additional deficit added for dressing would only give the Claimant four deficits, which would not make her medically eligible for the program.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was correct in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **uphold** the Department's action to deny this claimant services under the Aged Disabled Title XIX (HCB) Waiver program.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of August 2008.

**Sharon K. Yoho
State Hearing Officer**