



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St.
Charleston, W V, 25313
304-746-2360 ext 2227**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

November 14, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 4, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Aged & Disabled (HCB) Title XIX Waiver Services Program.

In arriving at a decision, the State Hearings 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.

The information which was submitted at your hearing revealed that your medical condition requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearings Officer to reverse the Department's proposal to terminate your benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Jennifer Butcher
State Hearings 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-1547

**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 14, 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 September 4, 2008, on a timely appeal, filed May 30, 2008.

It should be noted here that the Claimant's benefits continued 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.

III. PARTICIPANTS:

_____, Claimant

_____, Son of Claimant

_____, Caregiver for Claimant

Kay Ikerd, Bureau of Senior Services (BoSS), RN

Paula Clark, West Virginia Medical Institute (WVMI), participating by phone

Presiding at the Hearing was Jennifer Butcher, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Agency was correct in its decision to propose termination of the Claimant's benefits and services through the Medicaid Aged & Disabled Home and Community-Based Waiver Services 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 30, 2008
- D-3 Notice of Potential Denial dated May 1, 2008
- D-4 Additional Medical Information from Dr [REDACTED] M.D. dated May 6, 2008 and a letter from her daughter, _____ dated May 9, 2008
- D-5 Notice of Termination/Denial dated May 28, 2008
- D-6 Hearing request dated December 19, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant is an eighty-three (83) year old woman who is legally blind and lives alone in a first level apartment building.
- 2) The Claimant's appeal was filed on May 30, 2008 following a Pre-Admission Screening (hereinafter PAS) medical assessment completed on April 30, 2008 that resulted in the determination that the Claimant is no longer medically eligible to participate in the Medicaid Aged & Disabled Waiver Services Program.
- 3) On or about May 1, 2008, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual section Chapter 503.2. See attached criteria.

Based on your PAS, you have deficiencies in only four (4) areas – Vacating a Building, Eating, Grooming, and Dressing.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

This notice goes on to advise the Claimant that she can provide additional information regarding her medical condition within two (2) weeks for consideration before a final decision is made. However, if no additional information is received within two (2) weeks from the date of the notice, she will be sent a denial notice.

- 4) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated May 28, 2008 (Exhibit D-5). This notice states, in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

REASON FOR DECISION: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in four (4) areas – Vacating a Building, Eating, Grooming and Dressing.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 5) The Claimant's representatives contends that in addition to the four (4) deficits awarded by the Department, she should have been awarded deficits for Bathing and Incontinence of Bowels

Bathing- In order to qualify for a deficit in bathing, the individual must require physical assistance. The claimant needs assistance in getting in and out of the shower.

Continence of Bowels - In order to qualify for a deficit for continence, the individual must be incontinent of the bowels more than three (3) times a week.

- 6) Mr. _____ testified that his mother is a very proud person and she does not accept the fact she needs assistance in her daily life. _____ agreed with the assessment that was completed on April 30, 2008 stating he is sure his mother had told the nurse she could do the task when the question was asked. He also stated he was sure his sister, who was present at the assessment, also agreed with their mother just to keep peace in the family.
- 7) Exhibit D-4, (Additional medical information), a letter from her daughter, _____, stating her mother had given false information the day of the assessment and she explained that the Claimant needs assistance with her bathing. The Claimant is now unable to transfer in and out of the tub, and requires assistance in using a shower chair to bathe. This change took place within four (4) days from the time of the assessment.
- 8) _____ testified that the Claimant has been incontinent of her bowels for two or three years and she has worn adult undergarments for protection during that time period. He stated she does not like to wear the undergarments or let anyone know that she wears them.
- 9) With the additional information sent by _____ and the convincing testimony by _____, the answers given by the Claimant the day of the assessment were not completely truthful. Therefore, testimony and evidence supports and merits awarding two (2) additional deficits for Bathing and Continence of Bowels.
- 10) Aged/Disabled Home and Community-Based Services Manual Section 503 (Exhibit D-1)

- Program Eligibility for Client includes the following:

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 503.1.1 – 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.

- 12) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Chapter 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 can vacate the building:
a) independently, b) with supervision, c) mentally unable or d) physically unable to vacate a building. Vacating independently or with Supervision is not considered a deficit.

#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:
(g) suctioning, (h) tracheotomy, (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 states that an individual must have five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded four (4) deficits on a PAS assessment completed by WVMi in April, 2008 for Vacating, Eating, Grooming, and Dressing.
- 3) The clear and convincing evidence submitted during the hearing identifies two (2) additional deficits – Bathing and Continence of Bowels
- 4) The Claimant has established six (6) program deficits; this essentially qualifies for the continued medical eligibility 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 benefits and services through the Medicaid, Aged/Disabled, Title XIX, (HCB) Waiver.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of November, 2008.

**Jennifer Butcher
State Hearing Officer**