



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 5, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 20, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to deny your application for services under the Aged/Disabled Waiver 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 § 503.

The information submitted at your hearing revealed that you do meet the medical criteria required for the Aged/Disabled Waiver program.

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to deny your application for the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute
Central West Virginia Aging Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-1572

**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 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 November 20, 2008 on a timely appeal, filed June 17, 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's Sister and Power of Attorney
_____, Special Programs Manager, Central West Virginia Aging Services
_____, Homemaker

Kay Ikerd, RN, Bureau of Senior Services (by phone)
Courtenay Amick-Smith, RN, West Virginia Medical Institute (by phone)

Presiding at the Hearing was Kristi Logan, 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 or not the Department correctly denied Claimant's application for Aged/Disabled Waiver services.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual, Chapter 503, § 503.1.1, 503.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual, Chapter 503, § 503.1.1, 503.2
- D-2 Pre-Admission Screening Form dated May 2, 2008
- D-3 Potential Denial Letter dated May 21, 2008
- D-4 Denial Letter dated June 6, 2008
- D-5 Hearing Request received June 17, 2008

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant was evaluated for medical eligibility for the Aged/Disabled Waiver (ADW) program on May 2, 2008. A Pre-Admission Screening (PAS) form was completed that date by Courtenay Amick-Smith, RN, of the West Virginia Medical Institute (WVMI). Present at the assessment was Claimant's sister, _____.

Claimant was awarded deficits in the areas of vacating, bathing and grooming (D-2). Two (2) additional deficits were required for Claimant to be eligible for services under the ADW program.

- 2) A denial notification letter dated June 17, 2008 was issued and read in part (D-4):

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS indicated deficiencies in 3 areas. Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 3) _____ of Central West Virginia Aging Services stated they were contesting the areas of orientation, dressing, bowel incontinence and medication administration on behalf of Claimant.

Claimant has a diagnosis of senile dementia. _____ testified that Claimant is often confused and forgets where she is. In May 2008 Claimant did not know who one of her sisters was. There are also days that Claimant does not know who her homemaker is.

- 4) _____, Claimant's homemaker, testified that she started working for Claimant in April 2008. _____ stated she has to physically assist Claimant in getting her dressed. Due to Claimant's dementia, she will put her clothes on backwards or just stand there and not dress herself at all. _____ has to give Claimant step by step directions for her to dress herself and help her to put her clothes on correctly.

- 5) _____ testified that Claimant has had bowel incontinence since she has been working for her. Claimant's bowels constantly leak and there is some bleeding as well. _____, Claimant's sister with whom she lives, stated Claimant has had bowel incontinence for about a year now. Her sister hid it from her for a long time. Claimant would use paper towels or pages from magazines to line her underwear with. _____ became aware of the incontinence by finding the paper towels soiled with feces and blood in the trash can.

- 6) _____ and _____ testified that Claimant needs constant reminding to take her medications. Because of the dementia, Claimant cannot remember to take them at all. _____ sets us a pill box for Claimant and makes sure she takes her medicine _____ on time.

- 7) Ms. Amick-Smith testified to the reason why Claimant was not awarded deficits in orientation, dressing, incontinence and medication administration. Claimant participated in the assessment interview. She knew who she was, where she was and the date. Although Claimant does have confusion and forgetfulness, because she has periods of orientation, a deficit was not given.

During the assessment, Claimant stated she could dress herself completely and denied having incontinence other than bladder incontinence while having a seizure. She has a seizure every 1-2 months. Claimant's sister was present during the assessment and did not contradict this information.

Ms. Amick-Smith did not give a deficit for medication administration because Claimant was physically able to take her own medicine with reminders from others.

- 8) Aged/Disabled Home and Community-Based Services Manual §503.2 states:

Medical Criteria

An individual must have five (5) deficits on the 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

(a) Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)

(b) Bathing - Level 2 or higher (physical assistance or more)

(c) Dressing - Level 2 or higher (physical assistance or more)

(d) Grooming - Level 2 or higher (physical assistance or more)

(e) Bowel Continence - Level 3 or higher; must be incontinent

(f) Bladder Continence – Level 3 or higher; must be incontinent

(g) Orientation - Level 3 or higher (totally disoriented, comatose)

(h) Transfer - Level 3 or higher (one-person or two-person assistance in the home)

(i) Walking - Level 3 or higher (one-person assistance 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: (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. Claimant was awarded three (3) deficits on her May 2008 medical evaluation.
- 2) Claimant has periods of orientation and periods of confusion. Claimant would have to be totally disoriented or comatose in order to receive a deficit in this area. No additional points can be awarded.
- 3) Although Claimant requires prompting and reminders from others to take her medications, she is physically able to take her own medications. Claimant would have to be completely unable to administer her own medicines. Prompting and/or supervision of medication administration does not warrant a deficit. No points can be awarded.

- 4) Claimant's homemaker provided credible testimony that Claimant requires hands on assistance in dressing. Credible testimony was also provided by the homemaker and Claimant's sister that Claimant is unable to control her bowels and has accidents and/or leakage daily. Additional points will be awarded in dressing and incontinence.
- 5) Claimant meets the medical criteria necessary for eligibility for the Aged/Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the State Hearing Officer to deny Claimant's application for Aged/Disabled Waiver services. Deficits for dressing and incontinence will be awarded to Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of December, 2008.

**Kristi Logan
State Hearing Officer**