



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 7, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 30, 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 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. [Medicaid Policy Manual, Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, Sections 503, 503.1, 503.1.1 and 503.2]

The information submitted at your hearing reveals that your medical condition continues to require a sufficient number of services and the degree of care required to medically qualify you for the Aged & Disabled Home & Community Based Waiver Program.

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

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

_____,

Claimant,

v.

Action Number: 08-BOR-1622

**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 7, 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 originally scheduled to convene on September 19, 2008 and again on October 1, 2008 but was rescheduled and convened on October 30, 2008 on a timely appeal filed June 24, 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
_____, Claimant's daughter
_____, Claimant's friend/neighbor
_____, RN, Select In Home Services
Cecelia Brown, QA Manager, BoSS (Participated telephonically)
Melody Lehosit, RN, WVMI (Participated telephonically)

Presiding at the hearing was Thomas E. Arnett, 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 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:

Medicaid Policy Manual, Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, Sections 503, 503.1, 503.1.1 and 503.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Medicaid Policy Manual, Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, Sections 503, 503.1, 503.1.1 and 503.2
- D-2 Medicaid Aged & Disabled Waiver Program Medical Necessity Evaluation Request dated 4/16/08
- D-3 Pre-Admission Screening (PAS) assessment completed on May 27, 2008
- D-4 Notice of Potential Denial dated May 28, 2008
- D-5 Notice of Termination/Denial dated June 13, 2008
- D-6 Correspondence from [REDACTED] M.D. (Received June 11, 2008)

Claimant's Exhibits:

- C-1 Correspondence from [REDACTED] M.D. dated August 25, 2008

VII. FINDINGS OF FACT:

- 1) On May 27, 2008, the Claimant was evaluated (medically assessed) to determine continued eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program, and to assign an appropriate level of care {See Exhibit D-3, Pre-Admission Screening (PAS) completed on 5/27/08}.
- 2) On or about May 28, 2008, the Claimant was notified of Potential Denial (Exhibit D-4). 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, Chapter 503.2.

Based on your PAS you have deficiencies in only 3 areas – Bathing, Dressing and Continence.

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

It should be noted that Exhibit D-6 was received and considered in the Claimant's final decision rendered by WVMI.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated June 13, 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 3 areas – Bathing, Dressing and Continence.

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

4) The Claimant and her representative contend that she should have been awarded deficits in Medication Administration, Grooming and Vacating the building in the event of an emergency.

- The Claimant was assessed as being able to administer her own medications (see #28 on Exhibit D-3). Documentation found on Page 7 of 7 of Exhibit D-3 reveals that the Claimant was familiar with her medications and demonstrated the ability to open a pill bottle, both flip top and safety proof, independently and take out a tablet. It is noted that while the Claimant's daughter fills her medication planner, the Claimant demonstrated the knowledge and dexterity needed to administer her own medications. Testimony received at the hearing further supports the finding that the Claimant's daughter provides assistance by filling the weekly medication planner. While the Claimant would have been more appropriately assessed as requiring "prompting and supervision," pursuant to the medical eligibility criteria, the Claimant cannot be awarded a deficit based on this level of assistance. **Based on the evidence, the Claimant does not qualify for a deficit in Medication Administration.**

- The Claimant reported during the assessment that she is able to complete all areas of grooming independently (Exhibit D-3, page 6 of 7) but that her daughter washes her hair for her. The area of hair washing was reviewed at the hearing and while the Claimant has the functional ability to reach her head and scratch (as demonstrated during the assessment), testimony received by, and on behalf of, the Claimant reveals that she gets fatigued easily due to poor pulmonary function. Her daughter testified that while she could wash her hair, she would not be able to rinse or condition because she would be "worn out." Because Exhibit D-2 includes the diagnoses of COPD and Pulmonary Fibrosis, it is reasonable that the Claimant would be unable to complete this task without some assistance. **Based on the evidence, the Claimant is awarded a deficit in Grooming.**

- Exhibit D-3 reveals that the Claimant was assessed as requiring "supervision" to vacate her building in the event of an emergency. The Claimant was observed ambulating in her home and she reported to the WVMI RN that she would be able to vacate the building in the event of a fire. The Claimant was reportedly relocated from the third floor of her apartment complex to the first floor so that she would be better able to vacate in the event of an emergency. In order to exit the building, the Claimant must open her apartment door and exit to the hallway with her walker. She must then ambulate 15 to 20 feet, push a button on the wall next to the office to release an electronic lock and ambulate to the exit of the apartment building. According to testimony provided by the Claimant's daughter, the Claimant has difficulty opening the apartment complex exit doors and requires someone to hold the door open for her. In consideration of all the relevant factors - pulmonary function difficulty, documented ambulatory difficulties related to hip and knee replacements, as well as depression, anxiety and difficulty opening doors, it is reasonable that the Claimant would require physical assistance when vacating during an emergency. **A deficit in vacating the building in the event of an emergency is therefore established.**

5) 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.
- 6) 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 the state.
- 7) 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 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 are 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 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 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 three (3) deficits on a PAS assessment completed by WVMi in May 2008 – Bathing, Dressing and Continence.
- 3) The evidence submitted at the hearing identifies two (2) additional deficits – Grooming and Vacating the building in the event of an emergency.
- 4) Whereas the Claimant demonstrates five (5) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program is established.

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 Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of November, 2008.

**Thomas E. Arnett
State Hearing Officer**