



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

Dear Ms. _____:

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' decision to terminate services through the Aged/Disabled Waiver 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 Home and Community Based Waiver Services Manual § 503).

The information which was submitted at your hearing revealed that you no longer meet the medical criteria to continue services.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to terminate your services through the Aged/Disabled Waiver Program.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-1639

**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 September 4, 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 June 26, 2008.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Waiver program 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

_____ Case Manager, AmeriCare Management Services

_____ CNA, AmeriCare Management Services

Angel Khosa, Bureau of Senior Services

Christine Miller, RN, West Virginia Medical Institute (WVMI)

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 the Department's decision to terminate Claimant's services through the Aged/Disabled Waiver Program is correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual § 503

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community-Based Services Manual § 503, 503.1, 503.1.1 and 503.2

D-2 Pre-Admission Screening Form dated May 29, 2008

D-3 Correspondence from Dr _____ received June 12, 2008

D-4 Correspondence from _____ received June 11, 2008

Claimants' Exhibits:

C-1 None

VII. FINDINGS OF FACT:

- 1) Claimant was due for re-evaluation for the Aged/Disabled Waiver Program and a new Pre-Admission Screening (PAS) form was completed on May 29, 2008 by Christine Miller, RN with West Virginia Medical Institute (WVMI).

Claimant was awarded deficits in the areas of dressing and grooming. Claimant required three (3) additional deficits to continue eligibility for the Aged/Disabled Waiver program (D-2).

- 2) Claimant's daughter, _____, contested several areas that her mother failed to receive deficits. Ms. _____ testified that her mother is both bladder and bowel incontinent. They have applied for Medicaid payment of adult pads for her.

Claimant testified that she has bladder accidents 3-4 times a week, every week. She stated that this has been happening for at least a year. She stated she only has one kidney and this causes her to have frequent bladder accidents.

Claimant stated that she has bowel accidents 4-5 times a week, every week, and has for the past year. She has to change her underwear several times a day because of spots in her underwear. Claimant stated that she has had bowel blockages previously and regularly eats fruits and take enemas to prevent this from happening again. She also has a hemorrhoid.

- 3) Claimant testified that she uses a long handled brush to wash her feet and back if no one is home to help her. She is afraid of falling so she usually does not bathe unless someone is home.
- 4) Claimant testified that she suffers from dizzy spells due to a broken neck and back she suffered two (2) years ago. She has to be careful not to bend over or one will start. The dizzy spells lasts anywhere from hours to days. She takes a prescription medication for these spells, but it sometimes does not help. She is usually bed ridden during these episodes.

After the onset of a dizzy spell, Claimant is unable to get up from a sitting position or get out of bed. She needs the assistance of her walker to walk or she uses furniture or the walls for support. She will not bathe at all on these days. Claimant stated the spells do not occur daily or even weekly but do happen monthly.

- 5) Ms. _____ stated her mother should have a deficit in eating. She stated Claimant cannot cut up her own food. Claimant stated that she could cut up most of her food, if it was something tender and she had a knife. She sometimes gets choked on her food due to a thyroid problem. Claimant does feed her self.
- 6) Claimant and Ms. _____ testified that she often forgets to take her medication. Claimant's homemakers will remind her that she is due her medicine.
- 7) Christine Miller testified to the PAS that she completed on Claimant in May 2008. Ms. Miller stated that during the assessment, Claimant told her that her bladder accidents were not very often, less than three (3) times a week. Claimant was rated a Level 2 for bladder incontinence, which is occasional incontinence. A Level 3 is required to earn a deficit for bladder incontinence. Claimant denied having any problems controlling her bowels. She did report eating fruit to prevent constipation. Ms. Miller added that they use of any type of laxative to stimulate the bowels would cause most people to lose control and have an accident.

Claimant told Ms. Miller that she was able to bathe herself with the use of a long handled brush. Claimant stated that she could get into and out of the shower using a bar

and she sits on a chair. She demonstrated to Ms. Miller how she was able to reach her feet with the brush.

In reference to walking, Claimant told Ms. Miller that when she has her dizzy spells, she uses her walker. She reported not having to take her medication for the dizzy spells very often. Claimant walked freely throughout the home the day of the assessment and even bent over to pick something off the floor. Claimant was also able to get up from a sitting position independently and did so several times throughout the assessment. Claimant stated she has a Craftmatic adjustable bed to help her get up and makes sure she is stable prior to getting out of bed.

Ms. Miller tested Claimant's hand grips during the assessment and determined they were equal and strong. Claimant denied any problems cutting up her food and stated she did feed herself.

Claimant was knowledgeable about her medications and reported to Ms. Miller that she had no problems taking them herself. Ms. Miller stated that although Claimant may need some reminding to take her medications, because she can physically take them herself, she did not receive a deficit in that area.

- 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 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. Claimant was awarded two (2) deficits on her May 2008 medical evaluation.
- 2) At the time of the assessment, Claimant reported her bladder and bowel incontinence was occasional. Claimant testified that she has had bladder incontinence at least three (3) times weekly for the past year. Claimant also testified that she has bowel incontinence which appears to be consistent with the use of laxatives. Credible testimony from Claimant indicates she had frequent bladder incontinence at the time of the assessment and will be awarded a deficit in that area. No deficit will be awarded for bowel incontinence.
- 3) Testimony from Claimant revealed that she is able to bathe herself with the aid of a long handled brush. Since Claimant does have the ability to bathe herself, no deficit will be awarded in this area.
- 4) Claimant is able to feed herself and according to her testimony, can cut up most food with a knife. Because Claimant requires no assistance in feeding herself, no deficit can be awarded in this area.
- 5) Claimant testified that she is able to take her own medication. Claimant does require someone to remind her to take her medication; however, prompting does not merit a deficit in medication administration. No additional deficit can be awarded.
- 6) Testimony from Claimant and her daughter revealed that Claimant cannot walk or get up from bed or a sitting position after the onset of a dizzy spell. Claimant testified that her dizzy spells do not occur daily or even weekly. Even though Claimant does require assistance in transferring and walking when she has dizzy spells, the frequency of the dizzy spells are not often enough for Claimant to receive deficits in walking and transferring.
- 7) With the addition of the deficit awarded in this decision, Claimant still requires two (2) more deficits to continue eligibility for the Aged/Disabled Waiver program. Claimant no longer meets the medical criteria necessary to continue services.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate Claimant's Aged/Disabled Waiver services.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of September, 2008.

**Kristi Logan
State Hearing Officer**