



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 7, 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' termination of your medical eligibility under 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. [Aged/Disabled (HCB) Services Manual Section 503]

Information submitted at your hearing reveals that you do meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Allied Nursing and Community Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-1668

**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 July 2, 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 and Homemaker

██████████ Claimant's Case Manager, Allied Nursing

██████████ Claimant's RN Case Manager, Allied Nursing

Cecilia Brown, BOSS - participated telephonically
Kathy Gue, WVMI, participated telephonically

Presiding at the hearing was Cheryl Henson, State Hearing Officer and 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 proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver 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 Medical Necessity Evaluation Request form signed March 5, 2008
- D-3 Pre-Admission Screening (PAS) assessment completed on April 14, 2008
- D-4 Notice of Potential Denial dated April 15, 2008
- D-5 Notice of Denial dated April 30, 2008

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for the Title XIX Aged and Disabled Waiver Program during the month of April 2008.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-3) on April 14, 2008 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified the Claimant received four (4) deficits on the Pre-Admission Screening (PAS) assessment in the areas of bathing, dressing, continence and vacating a building.
- 3) The Claimant was sent a Notice of Potential Denial on April 15, 2008 (D-4) and was advised that she had two weeks to submit additional medical information for consideration by WVMI. No additional documentation was submitted by the Claimant.

- 4) The Department sent the Claimant a Notice of Denial (D-5) on April 30, 2008. The Claimant requested a hearing on July 2, 2008.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Grooming: which is under Functional Abilities. The Claimant was rated as self/prompting. The WVMI nurse recorded the following on the PAS:

She washes her hair in the shower and sometimes she has help if she washes her hair in the sink. She says that this does not happen very often, only if she gets something in her hair. She can comb her hair. No teeth. She files her fingernails. She clips her toenails.

The Claimant testified that she must hold onto the bar in the tub when washing her hair, and when performing this function in her sink she needs physical assistance. She states that she also sees a foot doctor who cleans the dead skin from her feet. The Claimant's RN Case Manager offered testimony that corroborates the Claimant's statements.

Eating: which is under Functional Abilities. The Claimant was rated as self/prompting. The WVMI nurse recorded the following on the PAS:

She denies needing help with eating or cutting up food.

The Claimant testified that she can cut up her own food. However, she does not use a knife because her hands are too weak. She stated that she only eats soft foods that she can cut with a spoon or fork. She cannot open jars for herself. She stated that the arthritis and neuropathy in her hands renders her unable to use a knife. The WVMI nurse added that as long as the Claimant can cut up her food in any manner she would not be assessed a deficit in this category.

Walking: which is under Functional Abilities. The Claimant was rated as being "independent" in this area. The WVMI nurse recorded the following on the PAS:

Observed the member walk across the room independently. She says that she has a walker to use as needed.

The Claimant stated that she sometimes must hold onto the walls in order to walk and uses a cane.

- 6) 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.
- 7) 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.
- 8) 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 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

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 dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received four (4) deficits in April 2008 in conjunction with her Aged/Disabled Waiver Program annual re-evaluation.
- 3) The totality of the evidence and testimony presented during this hearing support the finding of one (1) additional deficit in the area of grooming. The Claimant washes her hair when she is in the shower as well as at times in her sink. The reason given for washing her hair in the sink is due to her occasionally getting food lodged there when eating meals. Evidence is clear that she requires physical assistance when washing her hair in the sink and should be awarded a deficit in this area. She also requires assistance from a podiatrist in grooming her feet. In the area of “walking” evidence and testimony support the finding that the Claimant requires a “supervised/assistive device” at times, and although this rating does not add a deficit, it should be considered when determining points for level of care. The Claimant clearly reported during the assessment that she uses a walker at times, and testimony provided during the hearing supports this claim.
- 4) The required five (5) deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency’s proposal to deny the Claimant’s medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The Department is instructed to consider the deficits and other determinations awarded in this hearing when determining level of care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of October, 2008

**Cheryl Henson
State Hearing Officer**