



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 16, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 11, 2008. Your hearing request was based on the Department of Health and Human Resources' proposed termination of services under the Aged Disabled Waiver, ADW, 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 ADW 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 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- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the June 3, 2008 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the action of the Department to terminate services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Oretta Keeney, WVMI
[REDACTED] Aging and Family Services

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

_____,

Claimant,

v. **Action Number: 08-BOR-1703**

**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 17, 2008 for _____ on a timely appeal filed July 8, 2008. 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.

The claimant's benefits have been continued through this hearing process.

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 Witnesses:

_____, Claimant

_____, Claimant's wife

██████████ Case Manager, Aging and Family Services
██████████ Homemaker, Panhandle Support

Department's Witnesses:

Brian Holstine, Bureau of Senior Services, by speakerphone

Debra LeMasters, WVMI Nurse, by speakerphone

Presiding at the Hearing was Sharon K. Yoho, 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 was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §500

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §503 thru 503.4

D-2 Pre-Admission Screening, PAS, completed June 3, 2008

D-3 Eligibility Determination dated June 3, 2008

D-4 Notice of potential denial dated June 5, 2008

D-5 Notice of denial dated June 23, 2008

Claimant's Exhibits:

C-1 Letter with additional information received within two-week period allowed

C-1a Request for re-consideration

C-1b RN Assessment Form dated June 13, 2008

VII. FINDINGS OF FACT:

- 1) This claimant is a 50-year-old male Alzheimer's patient whose Aged Disabled Waiver case was undergoing a re-evaluation in June 2008.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on June 3, 2008 with the Claimant, his spouse and his homemaker present. The nurse determined from observation and the answers given to

her at the assessment that only three qualifying deficit could be awarded. Those qualifying deficits were in the areas of grooming, incontinence and vacating.

- 3) The Claimant's witnesses introduced issues in the areas of dressing, eating, bathing and medication administration.
- 4) The evaluating nurse had scheduled the PAS to be completed at 2:00 PM on June 3, 2008. When she was not able to find the home, she tried to contact them by phone and found the phone number to be out of service. She then contacted the Case Management Agency listed on the file and was told the Claimant was no longer their client. She then tried to call the doctor's office, which was listed in the file and found that this phone number was incorrect. She received a call from WVMI at approximately 3:30 with a new phone number that had been supplied by the Claimant's wife. She contacted the spouse who advised that they still wanted the evaluation to be completed that day and the nurse agreed to do that at their request. The nurse arrived at the home at 4:00 PM to complete the assessment.
- 5) The Claimant's wife testified that the evaluation seemed rushed. She said that the nurse talked very fast and after she left, her husband looked over at her and said, "what the H was that all about who was that person." The Claimant's wife believed the nurse rushed and reported that she talked real fast. She may have been rushing due to the late time of the evaluation however, the WVMI nurse talked fast at the hearing so this might just be her style.
- 6) The evaluating nurse noted that the Claimant had dressed himself the day of the PAS in a pull over T-shirt, shorts and slip on shoes. He advised her that he sits down to dress. The spouse told the nurse that he could dress himself. The homemaker said that she did not assist him in dressing. The Claimant's wife testified that she has to zip her husband's pants, as he cannot do zippers. She reported that at times when he is trying to put a shirt on, his arms go limp and she has to pull the sleeve on to his arms. The case manager testified that she has observed the homemaker on several occasions helping him with dressing. The Case Management agency provided additional information following the notice of potential denial, which addressed the Claimant's inability to completely dress himself due to pain, confusion, dizziness, and swelling in his hands. The Department reviewed this information and decided that no deficit should be assessed for dressing.
- 7) The Claimant told the nurse during the assessment that he could not cut up his meat because he could not apply enough pressure to cut it himself. He told the nurse that his hands swell. The nurse noted that he did make a fist slowly. The nurse noted that she observed him pick up a cigarette and use a lighter to light it. She observed him being able to hold the cigarette without difficulty. The Claimant told the nurse that he could use clippers to cut his finger and toenails. The nurse noted that the Claimant has no teeth and does not wear dentures and determined therefore that he is unable to eat tuff things. The nurse determined from the information that she gathered that he could cut up his food. There was information provided following the potential denial letter addressed eating. It noted that he does require his foods to be cut up for him and that he chokes easily on his food. The Department reviewed this information but did not

change the evaluation to include a deficit for eating. The Claimant's wife testified that she always cuts up his food. She cuts up steak, chicken, and hamburger patties for him.

- 8) The Claimant is able to bath himself and only needs someone to stay close to offer assistance if he has problems. The nurse was advised that he did not need anyone to help him with bathing. The spouse and the homemaker each told the nurse that they did not need to help him and that he could wash himself. Testimony from the spouse at the hearing contradicted the information given at the PAS. She reported that she or the homemaker washes his back, legs and feet.
- 9) The spouse puts the Claimant's medication in reminder boxes and tells him which day to open up. He then opens the box and takes his medication. Information gained at the PAS was consistent with testimony given at the hearing. The nurse assessed the Claimant as needing prompting and supervision for medication administration.
- 10) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS
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: MEDICAL ELIGIBILITY
A QIO under contract to BMS determines medical eligibility for the ADW Program.
- 12) 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 members are medically eligible based on current and accurate evaluations.
 - B. Each applicant/member determined to be medically eligible for ADW 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.
- 13) Aged Disabled Home and Community-Based Services Manual Section 503.2 MEDICAL CRITERIA:
An individual must have five deficits on the Pre-Admission Screening Form (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 to vacate 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. (Item 25 on the PAS 2005).
 - a. Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)

- b. Bathing ----- Level 2 or higher (physical assistance or more)
- c. Grooming--- Level 2 or higher (physical assistance or more)
- d. Dressing ---- Level 2 or higher (physical assistance or more)
- e. Contenance-- Level 3 or higher; must be incontinent
bowel
- f. Contenance-- Level 3 or higher; must be incontinent
bladder
- g. Orientation-- Level 3 or higher (totally disoriented, comatose)
- h. Transfer----- Level 3 or higher (one person or two person assist
in the home)
- i. Walking----- Level 3 or higher (one person assist 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 The individual is not capable of administering his/her own medications.

**14) Aged Disabled Home and Community-Based Services Manual Section 503.4
MEDICAL REEVALUATION:**

Annual reevaluations for medical necessity for each ADW member must be conducted.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMI nurse, determined that the claimant had only three qualifying deficits in the areas of grooming, incontinence and vacating.
- 2) Evidence and testimony provided for this hearing support that additional deficits should have been assessed in the areas of eating and dressing.
- 3) The nurse was advised that the Claimant needed his food cut up for him however, she determined that he could not eat such food without teeth and that if he could light a cigarette and hold a cigarette and clip his nails that he could cut up his own food. Even after additional information was provided regarding his inability to cut his food and of his choking, the Department failed to assess a deficit for eating.
- 4) The Claimant is not able to zip his pants or to do buttons. He may have dressed himself the day of the assessment, but testimony indicates that while he may be able to get his own clothes on, others have to zip and button his clothes for him. his wife has to zip his pants. After the Department reviewed additional documentation about his inability to adequately dress himself, no additional deficit was assessed.
- 5) Testimony and evidence supports that the Department assessed medication and bathing correctly based on the information gathered. The Claimant can take his

medication from the reminder box and take them after being prompted to do so. He is able to bath himself and the spouse and homemaker at the PAS both denied helping him in anyway with bathing. The testimony given by the spouse was contrary to this and led to uncertainty about his ability to bath unassisted. Due to this discrepancy in information this hearing officer must uphold the Department's decision regarding bathing.

- 6) It is reasonable to believe that the PAS completed in the late day of June 3, was somewhat rushed. The documents provided to the evaluating nurse clearly were not up to date. The resulting confusion may have set an undesirable tone for the evaluation, which might have led to inaccurate conclusions.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was incorrect in their determination that this Alzheimer's Claimant is no longer medically eligible for the ADW program. I am ruling to **reverse** the Department's action to terminate this claimant's services under the Aged Disabled Title XIX (HCB) Waiver program. I further rule that the Department assess points associated with the additional two deficits in determining the level of care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of September 2008.

**Sharon K. Yoho
State Hearing Officer**