



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 30, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 23, 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 May 21, 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
Senior Life Services of [REDACTED]

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

_____,

Claimant,

v.

Action Number: 08-BOR-1706

**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 29, 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 sister and power of attorney
- _____, Claimant's niece & homemaker
- _____, Claimant's brother-in-law
- _____, Case Manager, Senior Life Services of [REDACTED]
- _____, Homemaker RN, Senior Life Services of [REDACTED]

Department's Witnesses:

- Cecilia Brown, Bureau of Senior Services, by speakerphone
- Tammy Kessel, WVMJ 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 May 21, 2008
- D-3 Eligibility Determination dated May 21, 2008
- D-4 Potential denial notice dated June 3, 2008
- D-5 Proposed termination notice date June 24, 2008
- D-6 Letter from Dr. [REDACTED] dated June 16, 2008 received by the Department June 16, 2008

Claimant's Exhibits:

- C-1 Letter from [REDACTED] Home Health dated September 16, 2008
- C-2 Letter from Dr. [REDACTED] dated July 17, 2008

VII. FINDINGS OF FACT:

- 1) This claimant is a 53-year-old female whose Aged Disabled waiver case was undergoing a re-evaluation in May 2008. She has primary diagnoses of Multiple Sclerosis.

- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on May 21, 2008 with the claimant and her niece present. This niece was also the Claimant's homemaker. The nurse determined from observation and the answers given to her at the assessment that only two qualifying deficit could be awarded. Those qualifying deficits were in the areas of eating and incontinence.
- 3) Additional information was received by the Department within the allotted 13-day time frame following the potential denial letter. A letter dated June 16, 2008 was received and reviewed by the evaluating nurse who determined no changes were warranted.
- 4) The Claimant's witnesses introduced issues in the areas of bathing, walking, vacating in the event of an emergency and medication administration.
- 5) The Claimant advised the evaluating nurse at the PAS that she could get in and out of her walk in shower unassisted and that there were no body parts that she could not wash herself. She has a shower bench. The nurse assessed the Claimant as needing no hands on assistance to bathe. The doctor's letter of June 16 did not address needs for assistance in bathing. Concern for her ability to safely bath without falling became apparent which prompted the family to bring in services from Panhandle Support in or around July 2008. The Claimant's sister and her niece both testify that they assist the Claimant with bathing. A letter from the Claimant's doctor dated July 17, 2008 received by the Department and the Hearing Officer on September 8, 2008 states that the Claimant needs assistance with bathing due to her being unsteady while standing.
- 6) The Claimant's niece hands medication to her to take. The Claimant advised the nurse that she could pick the medication up and take it. The nurse observed the Claimant give her own pre-dosed copaxone injection. The nurse assessed the claimant as needing only prompting and supervision for medicating. The June 16 doctor letter did not address medication administration however, his letter dated July 17 did state that the Claimant needs assistance administering medications as she has mild cognitive impairment. The Claimant drops pills occasionally and her niece has to give the injections on occasion because the Claimant is required to rotate locations of her injection sites and she is not always able to reach the locations. The niece has to tear the backing off medicated patches used by the Claimant.
- 7) The evaluating nurse noted that she observed slight tremors of the legs and wobbly knees when the Claimant ambulated during the visit. She noted that she observed no problem with balance or gait. The nurse was advised that the Claimant at times gets her legs wrapped around the rolling walker, gets tangled up and falls. The Claimant advised the nurse that she fell, "the other day." The nurse assessed the Claimant as needing only an assistive device for ambulating and no hands on assistance. The June 16 letter from the doctor reports that the Claimant's MS continues to progress, she has poor balance and should not walk unassisted. It further states that she forgets and walks by herself and falls. The Department reviewed this letter and determined that a change in the walking assessment was not warranted.
- 8) The Claimant advised the evaluating nurse that she thought she could get out of her home in the event of an emergency. She advised that she could put her walker out a window and crawl backwards down the steps in the back. The nurse determined that

the Claimant would only need supervision to vacate. The June 16 doctor letter states that the claimant has cognitive impairment, misjudges distances and that she would need help vacating. The Department reviewed this additional information and determined that a change in the assessment was not warranted.

9) 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.

10) 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.

11) 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.

12) 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. Continence-- Level 3 or higher; must be incontinent
bowel
- f. Continence-- 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.

13) 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 May PAS the WVMi nurse, determined that the claimant had only two qualifying deficits in the areas of eating and incontinence.
- 2) Evidence and testimony provided for this hearing support that additional deficits should have been assessed in the areas of vacating in the event of an emergency, walking and medication administration. Nothing in the evidence and testimony lends itself to the belief that this Claimant's at the time of the assessment required assistance with bathing.
- 3) The nurse noted that the Claimant had slight tremors in her legs and was wobbly in her knees. The nurse was advised of a recent fall due to her getting tangled up in her walker. The Claimant's doctor advised that she should not walk unassisted due to cognitive impairments and that she would need help to vacate. The Department should have assessed the Claimant as needing physical assistance to walk and to vacate in the event of an emergency.
- 4) Testimony and evidence supports that while this Claimant is able to put her own pill medication in her mouth, she does need help with medication patches and with injections to ensure rotation of injection site. Indications are that the medication patches were not addressed at the PAS and the injection rotation was not addressed at the PAS. It is unclear as to which party was at fault for this lack of information but a more thorough evaluation may have revealed these issues.

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 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 three additional 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 30th Day of September 2008.

**Sharon K. Yoho
State Hearing Officer**