



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 Ms. _____:

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 12, 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] CCIL

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

_____,

Claimant,

v.

Action Number: 08-BOR-1707

**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 16, 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
- ██████████ Case Manager, Coordinating Council for Independent Living
- ██████████ Homemaker RN, WV Choice
- ██████████ Claimant's daughter

Department's Witnesses:

- Angel Khosa, Bureau of Senior Services, by speakerphone
- Melody Lehosit, 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 12, 2008
- D-3 Eligibility Determination dated July 10, 2008

Claimant's Exhibits:

- C-1 Letter from Case Management Agency stating Claimant's limitations, July 3, 2008

VII. FINDINGS OF FACT:

- 1) This claimant is an 84-year-old female whose Aged Disabled waiver case was undergoing a re-evaluation in June 2008. She has primary diagnoses of Adult Onset Diabetes, Hyperlipidemia, Coronary Artery Disease, Hypertension and Chronic Renal Failure.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on June 12, 2008 with the claimant, her daughter and her daughter-in-law present. 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 grooming and incontinence.

- 3) The Claimant's witnesses introduced issues in the areas of bathing, dressing, transferring, walking, vacating, medicating and orientation.
- 4) The Claimant has some hearing problems, which adversely affects her communication. She becomes disoriented at times when her blood sugar drops, but she is not totally disoriented.
- 5) The Claimant's daughter places medication in reminder boxes. Her daughter also pre-fills glucose syringes. At the time of the PAS, the nurse was told that the Claimant could then take the pills out of the boxes, take her medication, and administer her own injections. At the hearing the daughter, who was present at the evaluation, testified that the homemaker has to take the medication out of the boxes and place them beside the Claimant's plate for her to take. The evaluating nurse noted that the Claimant needs prompting and supervision. The PAS on page 8 of 8 states, "Deficit in medication administration and grooming and bladder stand. PAS Correct." It is believed that this statement was in error as it is clear that the evaluating nurse never intended to assign a deficit for medication administration. The notification letter did not include medication administration as an assigned deficit.
- 6) The evaluating nurse notes that the Claimant is able to raise her right and left arm up to jaw height however noted that she could dress herself. The Claimant told the nurse that she did not have her homemaker help her with dressing. The Claimant is not able to do buttons or zippers. This along with the limited range of motion prevents her from adequately dressing herself without assistance.
- 7) The Claimant was doing her own bathing without assistance at the time of the PAS. The daughter testified that since the PAS it was determined that she could not properly adjust the water temperature and that others have been helping her with her bath since then.
- 8) The Claimant's homemaker RN testified that the Claimant has had numerous falls and that at times when her blood sugar is low, she will black out when rising to standing. Her case manager testified that the Claimant could not get up from sitting on the couch without hands on assistance. The nurse observed her raise to standing from a table by using the table to pull herself up and therefore determined that she could transfer using assistive devices. It was not made clear whether the nurse evaluated the Claimant's ability to transfer from bed or from areas where a table would not be available.
- 9) The evaluating nurse observed the Claimant ambulate in the home and only using assistive devices when going up and down some steps. The nurse determined that hands on assistance was not needed for ambulating. She reported that the Claimant swayed when she was walking, but did not stagger. The Claimant's witnesses note that the Claimant uses walls and furniture to ambulate although she has a cane and a walker that she prefers to use walls and furniture for support.

- 10) The Claimant was assessed as requiring only supervision to vacate in the event of an emergency after being told that the Claimant may become frightened or anxious during an emergency. The evaluating nurse observed the Claimant sway during as she walked in normal situations. She at times requires physical assistance to transfer. In the event of an emergency, she possible would require hands on assistance to ambulate and to negotiate the four steps required to exit the home. This Claimant would most likely be frightened and anxious and would need physical assistance to vacate safely.
- 11) The Claimant's case manager testified that prior to this June 2008 PAS, the Claimant had been approved at a level C of care under the Aged Disabled Waiver program. No information was provided to indicate that the Claimant's medical condition had improved in any area.
- 12) 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.
- 13) 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.
- 14) 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.
- 15) 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. Continen--
bowel | Level 3 or higher; must be incontinent |
| f. Continen--
bladder | 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 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.

**16) 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 two qualifying deficits in the areas of grooming 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, transferring and dressing. Nothing in the evidence and testimony lends itself to the belief that this Claimant's medical condition has improved in the past year from when she was assessed as medically eligible for this program at a level C of care. WVMI is contracted by the Department to insure that medical eligibility is consistently applied throughout the State. It is concerning that; this evaluation produced a PAS, which assessed only two deficits during the re-evaluation of a level C client/member.
- 3) While it is understood that the Claimant can ambulate with caution unassisted in her home in normal situations, it is clear that she would require physical assistance to vacate in the event of an emergency.
- 4) Testimony and evidence supports that this Claimant can transfer when she has a table to pull herself up. The evaluating nurse did not address the issue of getting out of bed or up from other situations. Testimony by the Claimant's witnesses conclude that she does need help getting up from the couch and that she sometimes blacks out when rising. She should have been assessed as needing hands on assistance to transfer.

- 5) The Claimant is in some instances able to get dressed without help from others. Due to the Claimant's limited range of motion in her arms and her inability to do buttons and zippers, she does need assistance to properly dress.

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 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 16th Day of September 2008.

**Sharon K. Yoho
State Hearing Officer**