



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

October 7, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 24, 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 April 29, 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, WVM I
Central WV Aging Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-1766

**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 October 7, 2008 for _____ on a timely appeal filed June 17, 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 Daughter

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone
Tammy Kessel, 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 April 29, 2008
- D-3 Eligibility Determination dated April 29, 2008
- D-4 Potential denial notice dated May 8, 2008
- D-5 Proposed termination notice date June 13, 2008
- D-6 Physician's letter dated May 14, 2008

VII. FINDINGS OF FACT:

- 1) This Claimant is a 76-year-old female whose Aged Disabled waiver case was undergoing a re-evaluation in May 2008. She has primary diagnoses of Congestive Heart Failure, Chronic Obstructive Pulmonary Disease, Emphysema, Depression and Anxiety.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the Claimant's home on April 29, 2008 with the Claimant and her homemaker RN present. Her homemaker was available for the review of the PAS. The daughter who was present for the hearing was not aware of the evaluation date and was therefore not available. The nurse determined from observation and the answers given to her at the assessment that only three qualifying deficit could be awarded in the area of bathing, grooming and vacating in the event of an emergency.

- 3) The Claimant's daughter introduced issues in dressing, bladder incontinence, medication administration and transferring.
- 4) The Claimant told the evaluating nurse that she had dressed herself that day. The nurse arrived at 10:30 AM and the Claimant was wearing pajamas. She told the nurse that she does not remember the homemaker helping her get dressed. At the end of the PAS, the homemaker was asked what she does for the Claimant and she did not say that she helped her with dressing. The daughter testified that the pajamas that her mother had on late that morning were pajamas that she had helped her mother put on the night before. She states that her mother gets dizzy when she bends forward and she needs help getting pants over her feet. A letter from the Claimant's doctor received by the Department on May 20 advised that the Claimant needs physical assistance with dressing. This letter addresses medical conditions of severe COPD, emphysema and mini strokes. The evaluating nurse reviewed this letter, which did not change her decision of awarding no deficit for dressing.
- 5) The Claimant advised the evaluating nurse that she had 3 or 4 bladder accidents the previous week. After further questioning by the nurse, the Claimant changed the frequency to less than three. A list of medical conditions provided to the nurse prior to the PAS included urinary urgency and daily incontinence. The nurse noted this on the PAS. The Daughter testified that her mother has many bladder accidents. The physician's letter, dated May 14, 2008, states that the Claimant suffers from 3-4 urinary incontinence episodes weekly. After reviewing this physician letter, the nurse did not change her assessment regarding incontinence.
- 6) The Claimant reported that she takes her pills from the pill divider box that her daughter fills. She told the nurse that she could not fill her own boxes because she cannot see the medication very well. The nurse assessed the Claimant as being able to administer her own medication. Testimony indicates that the Claimant will drop pills while taking them and others have to pick them up. The Physician notes in his letter that the Claimant needs physical assistance with medication administration.
- 7) The evaluating nurse observed the Claimant transfer onto and off her bed. The Claimant told the nurse that she did not need anyone to help her. It is unclear whether the issue of transferring from a chair and back was covered during the PAS. The Claimant's daughter testified that her mother at times does need help getting up from a chair.
- 8) 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.
- 9) 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.

**10) 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.

**11) 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.

**12) 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 three qualifying deficit in the areas of bathing, grooming and vacating in the event of an emergency.
- 2) Evidence and Testimony supports that the assessment should have resulted in an additional deficits for needing assistance with dressing and for bladder incontinence. The Claimant, at 10:30 was clearly not dressed for the day. She remained in her bed time clothing that her daughter had help her put on the night before. The nurse was advised prior to the PAS of urinary urgency and bladder incontinence, the Claimant told her she had 3 or 4 accidents the previous week and the Physicians letter supported this information.
- 3) The Physician notes that the Claimant needs physical assistance with medication administration. It is not clear whether he is referring to the filling of her reminder boxes or what specific assistance she needs. She did tell the nurse that she could get the pills out of the boxes and put them in her mouth. Testimony confirmed this however indicates that she occasionally drops pills. No deficit for medication administration is warranted. The Claimant did not tell the nurse of any situations where she needs help with transferring. Testimony indicates that there are times when she needs help getting up from chairs. Due to discrepancies in information, no deficit is warranted for transferring.

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 of dressing and incontinence 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 7th Day of October 2008.

**Sharon K. Yoho
State Hearing Officer**