



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 2, 2008

Dear _____:

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 June 6, 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-1769

**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 2, 2008 for _____ on a timely appeal filed June 14, 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 and homemaker

_____, Claimant's homemaker

_____ Case Manager, Senior Life Services of _____

_____ Homemaker RN, Senior Life Services of _____

Department's Witnesses:

Brian Holstein, 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 June 6, 2008

D-3 Eligibility Determination dated June 6, 2008

D-4 Potential denial notice dated June 18, 2008

D-5 Proposed termination notice date July 3, 2008

Claimant's Exhibits:

C-1 Letter from Dr. _____ dated July 19, 2008

VII. FINDINGS OF FACT:

- 1) This Claimant is a 60-year-old male whose Aged Disabled waiver case was undergoing a re-evaluation in June 2008. He has primary diagnoses of CVA with Right Hemi Paresis, Coronary Artery Disease and Cognitive Impairment.

- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the Claimant's home on June 23, 2008 with the Claimant and his daughter and his homemaker present. The nurse determined from observation and the answers given to her at the assessment that only one qualifying deficit could be awarded in the area of eating.
- 3) The Claimant's witnesses introduced issues in the areas of bathing, grooming, dressing and vacating in the event of an emergency.
- 4) The evaluating nurse was advised at the PAS that the Claimant cannot always get out of the shower without help. She was advised that either his daughter or the homemaker stands by and helps him wash his back if he needs help and to help him get out when he needs help. He is able to wash most areas of his body by himself. Testimony coincided with this information that was given to the evaluating nurse. A doctor's letter, Exhibit C-1, which was presented as evidence, relates that he needs physical assistance to bath. The nurse did not assess the Claimant as needing help with bathing.
- 5) The Claimant advised the evaluating nurse that he could put a pull over shirt on but there are times when he cannot get it pulled down in the back. His daughter told the nurse that her father does need help with his shirts at times. He does not wear items that have snaps or zippers. The Claimant has a brace that he has to put on in order to walk. He struggles with putting it on and others at times have to help him with it. The nurse was advised that two times the previous week the Claimant needed help with putting on his shoes. Exhibit C-1 supports this information given to the nurse at the PAS and is in line with testimony regarding the Claimant's need for assistance in dressing. The nurse did not assess the Claimant as needing help with dressing.
- 6) The evaluating nurse did not give the Claimant a deficit for grooming. The Claimant needs assistance with completing the task of shaving. He gets tired and his daughter, at times, has to finish the job. This information was related to the nurse, was provided in testimony and was supported by the doctor's letter.
- 7) The Claimant advised the evaluating nurse that if there were an emergency, that someone would grab hold of him and take him out of the home. His daughter told the nurse that if his brace was off that he may need supervision using his quad cane. The nurse noted that he lives on the ground floor and that there are two entries. She also noted on the PAS that she observed the member ambulate using the quad cane with slight problems with balance and gait. Exhibit C-1 indicates that the Claimant needs supervision and physical assistance to vacate. The nurse assessed the Claimant as only needing supervision to vacate in the event of an emergency.
- 8) During the PAS, the Claimant told the nurse that his last episode of bladder incontinence was the previous month and it occurred four times that month. The evaluation was completed 6 days into the month of June and no accidents were reported for June. The nurse therefore, did not assess a deficit for bladder incontinence. Testimony at the hearing indicated that he wears Depends all the time and is wet each morning.

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 one qualifying deficit in the area of eating.
- 2) There was clear information given to the nurse at the assessment that should have resulted in a deficit for bathing, dressing, grooming and vacating in the event of an emergency. Testimony further supports this belief. Exhibit C-1, although it was dated in excess of a month after the evaluation, also supported these areas of deficit. Exhibit C-1 also addressed areas of medical conditions and symptoms. The information given to the nurse at the PAS regarding bladder incontinence did not reveal the extent of incontinence necessary for assessing a deficit in that area. Evidence and testimony contradicted the information the nurse gathered at the assessment. Due to this discrepancy, it cannot be concluded that he should be assessed a deficit for incontinence.

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 four additional deficits in determining the level of care as well as review Exhibit C-1 to include points for medical conditions and symptoms addressed in that letter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of October 2008.

**Sharon K. Yoho
State Hearing Officer**