



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 8, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 7, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue services under the Aged Disabled Waiver, A/DW, 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 A/DW 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 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the April 30, 2007 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BOSS
Family Service of [REDACTED]

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

_____,
Claimant,

v. **Action Number: 07-BOR-1787**

**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 December 7, 2007 for _____. 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. This fair hearing was convened on December 7, 2007 on a timely appeal, filed July 20, 2007. This hearing was scheduled previously on October 16 and October 26, 2007 but was rescheduled at the request of the agency.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

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

_____ – Homemaker Just Right Services

_____ – Geriatric Social Worker Family Services of the _____

_____ – Case Manager Family Services of the _____

Department's Witnesses:

Kay Ikerd – Nurse Bureau of Senior Services by phone

Debra Lemasters – Nurse WVM I by phone

Presiding at the Hearing was Melissa Hastings, 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 utilizing the Aged/Disabled Home and Community Based Service Program criteria effective November 1, 2005.

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V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §570**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §570,570.1 a,b

D-2 Pre-Admission Screening, PAS, completed April 30, 2007 with Evaluation Request form received April 6, 2007.

D-3 Notice of Potential Denial dated May 10, 2007

D-4 Letter from _____, MSW to WVM I dated May 25, 2007

D-5 Notice of Denial dated May 29, 2007

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Ms. _____ is an 83 year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on April 30, 2007.
- 2) A WV Medical Institute (WVMI) Nurse Debra Lemasters completed a Pre-Admission Screening (D1) in the claimant's home with the claimant only. The evaluating nurse determined that the claimant had 3 (three) qualifying deficits. She assigned a deficit for Ms. _____'s need for physical assistance in bathing, grooming and continence.
- 3) The primary diagnosis listed on the Pre-Admission Screening (D1) was severe Chronic Pulmonary Obstructive Disease and Diabetes.
- 4) Claimant's representative contends that Claimant should have been awarded deficits in the areas of Vacating the building, Dressing, Medication Administration and Orientation.
- 5) The Pre-Admission Screening form (D2 section 25) addresses the issue of vacating the building in case of an emergency. The evaluating nurse has marked this section with the notation "Independently". Page 7 of this same document provides a more in depth discussion of the issue. It states the following:

Per applicant she stated she could vacate her apartment in an emergency, denied needing supervision or being physically unable to vacate.

Testimony received during this hearing indicates Claimant has moved since the assessment was done and has more steps to negotiate to vacate. However the Claimant's testimony indicates she still thinks she can vacate on her own.

- 6) The Pre-Admission Screening form (D2 section 25c) reveals that the evaluating nurse assigned a level 1 Self/Prompting to the Claimant in the area of dressing. Nurse's comments on page 7 of 8 of the PAS (D2) states the following:

Per client she dresses herself. Wears nightgowns and robes and slippers in her home. Per client she can put on her own pants, tops and fastens bra in the front and moves clasp around to back. Does not wear socks or hose and stated she can put on her own shoes. Demonstrated at visit she can reach both her feet. Client state HM will sometimes help her get dressed but she "does not have to". Client states she can dress herself.

Testimony received during the hearing from the Claimant indicates that it is hard for her to pull up pants. She confirms however that she wears house dresses at home and can put them on herself.

- 7) The Pre-Admission Screening form (D2 section 28) addresses the issue of medication administration. The evaluating nurse's assessment was that the Claimant required prompting and supervision in administering medications but that she administered medications to her self. Nurse's comments page 8 of 8 of the PAS (D2) states the following:

Per client, cannot see to draw up her own insulin so insulin is drawn up for her but she is able to give her own insulin injections. Her pills are prefilled at pharmacy for she cannot see to read labels and she stated does not need prompting or supervision for medications. That she remembers to take them.

Testimony received from the Claimant's representatives indicates that three out of seven days Claimant will forget to take her medications. Must be reminded. Testimony from the department's representative indicates that a level 1 is the appropriate level of care assignment for someone requiring prompting and or supervision for medication administration.

- 8) The Pre-Admission Screening form (D2 section 25g) reveals that the evaluating nurse assigned a level 1 Oriented to the Claimant in the area of Orientation. Nurse's comments on page 7 of 8 of the PAS (D2) state the following:

Alert and Oriented X 3.

Testimony from the Claimant's representatives indicate that Claimant is disoriented at times to day and/or date. Testimony received from the evaluating nurse indicates that Claimant was alone during the evaluation and gave the nurse her proper name, address and birthdate. There is no diagnosis of Alzheimers or Dementia noted by her physician nor is there any evidence of medication being administered for either of these medical problems. The evaluating nurse's testimony indicates that when she does an assessment and the client is on their own, she initially evaluates the ability of the client to understand and respond to any questions before she proceeds with the assessment. In this case the evaluating nurse made a decision that the Claimant was capable of understanding and participating on her own in the assessment.

- 9) Aged/Disabled Home and Community-Based Services Manual Section 570 (J-1)- Program Eligibility for client:

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 570.1.a – Purpose: The purpose of the medical eligibility review is to ensure the following:

A. New applicants and existing clients are medically eligible based on current and accurate evaluations.

B. Each applicant/client determined to be medically eligible for A/DW 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 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

A. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).

Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)

Bathing ---- Level 2 or higher (physical assistance or more)

Grooming--- Level 2 or higher (physical assistance or more)

Dressing ---- Level 2 or higher (physical assistance or more)

Continence-- Level 3 or higher (must be total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)

Orientation-- Level 3 or higher (totally disoriented, comatose)

Transfer----- Level 3 or higher (one person or two person assist in the home)

Walking----- Level 3 or higher (one person assist in the home)

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)

D. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual is not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

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.
- 2) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on April 30, 2007. The WVMi nurse assigned the claimant three (e) qualifying deficits in the areas of bathing, grooming and continence utilizing Aged/Disabled Home and Community Based Services manual criteria effective November 1, 2005.
- 3) The issues raised at the hearing were in the areas of Vacating the building, Dressing, Medication Administration and Orientation.
- 4) Evidence and testimony received during this hearing reveal that in the contested areas the assessment made by the evaluating nurse was accurate. Claimant herself expressed the ability to vacate a building on her own, dress herself and administer her own medications. In addition, she demonstrated during the hearing her orientation to person, place and time.

IX: DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, the Hearings Officer finds that the evaluating nurse assessed the claimant with three (3) deficits appropriately. It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to terminate benefits and services under the Aged/Disabled Waiver Services Program. .

X: RIGHT OF APPEAL

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of January 2008.

**Melissa Hastings
State Hearing Officer**