



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 6, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 1, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to deny your application for the Aged/Disabled Waiver program.

In arriving at a decision, the State Hearings 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 Aged/Disabled Waiver 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 a 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 Home and Community Based Waiver Services Manual § 503).

The information which was submitted at your hearing revealed that you do not meet the medical criteria to qualify for services under the Aged/Disabled Waiver program.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to deny your application for services under the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services

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

_____,

Claimant,

v.

Action Number: 08-BOR-1801

**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 1, 2008 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 October 1, 2008 on a timely appeal, filed July 21, 2008.

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

Kay Ikerd, Bureau of Senior Services
Chris Miller, RN, West Virginia Medical Institute

All participants testified by phone.

Presiding at the Hearing was Kristi Logan, 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's decision to deny Claimant's application for the Aged/Disabled Wavier program was correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual § 503

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual § 503
- D-2 Pre-Admission Screening Form dated May 27, 2008
- D-3 Potential Denial Letter dated June 2, 2008
- D-4 Denial Letter dated June 20, 2008

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Claimant applied for the Aged/Disabled Waiver (ADW) program and was evaluated for medical eligibility on May 27, 2008. A Pre-Admission Screening (PAS) form was completed that date by Chris Miller, RN of the West Virginia Medical Institute (WVMI) (D-2). Claimant's sister, _____, was present at the assessment as well.

Claimant was awarded deficits in the following areas: bathing, grooming and dressing. Two (2) additional deficits were required for Claimant to qualify the ADW program.

- 2) A notification letter dated June 20, 2008 was issued and read in part (D-4):

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. Eligibility for the

Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 3) Claimant testified that she has days where she cannot get out of bed. On these bad days, she will only get out of bed to use the bathroom. She stated she is able to roll out of bed and uses a walker or can to help her get around. She will also hold onto the wall or furniture, Claimant uses a wheelchair in the home, but it will not fit through the hallway to her bedroom. She can wheel herself from the living room to the kitchen.

Claimant stated her son lived with her from May to August while recovering from surgery. She stated his girlfriend came everyday to help them both get around. Claimant's sister also comes several days a week to help her.

Claimant is unable to prepare her own food because she has trouble standing. She is able to feed herself without assistance. She can take her own medications but needs constant reminding to do so and she also uses a pill box.

- 4) Chris Miller testified to the reasons why Claimant did not receive deficits in the areas she contested. In order to receive a deficit in eating, Claimant would require physical assistance to eat. Since Claimant can feed herself, she was not given a deficit. Also, Claimant would require physical assistance in taking her medications. Needing reminders to take medications does not qualify Claimant for a deficit in this area.

On the day of the assessment, Claimant was able to get up from a sitting position without assistance on at least three (3) occasions. Claimant advised her that she was able to roll herself out of bed and used a regular toilet without assistance. Claimant demonstrated how she was able to operate her wheelchair independently and even picked it up while looking for a bottle of medicine.

Ms. Miller stated that even though Claimant may use an assistive walking device such as a cane to get around, because she was able to walk and transfer herself without the physical assistance of another person, she could not give Claimant deficits in walking or transferring.

Ms. Miller added that she went over the assessment with Claimant and her sister and they both agreed to its contents. Ms. Miller was not made aware of Claimant's bad days when she is unable to get out of bed at all.

- 5) Aged/Disabled Home and Community-Based Services Manual § 503.2 states:

Medical Criteria

An individual must have five (5) deficits on the 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 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

- (a) Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)
- (b) Bathing - Level 2 or higher (physical assistance or more)
- (c) Dressing - Level 2 or higher (physical assistance or more)
- (d) Grooming - Level 2 or higher (physical assistance or more)
- (e) Bowel Continence - Level 3 or higher; must be incontinent
- (f) Bladder Continence – 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 assistance in the home)
- (i) Walking - Level 3 or higher (one-person assistance 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: (g)suctioning (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations

#28 Individual is not capable of administering his/her own medications

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. Claimant was awarded three (3) deficits on her May 2008 medical evaluation.
- 2) Documentation and testimony revealed that Claimant was able to walk and transfer herself with an assistive device. Claimant would require physical assistance from another person to qualify for deficits in these areas. No additional points can be awarded.
- 3) Claimant is able to feed herself and administer her own medications. Although Claimant needs assistance in meal preparation and reminding to take her medications, she would require physical assistance in eating and medication administration to receive deficits. No additional points can be awarded.
- 4) Claimant does not qualify for five (5) deficits and therefore does not meet the medical criteria to be eligible for the Aged/Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant's application for the Aged/Disabled Waiver program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of October, 2008.

**Kristi Logan
State Hearing Officer**