



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 3, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 31, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the Aged/Disabled (HCB) Title XIX Waiver Services 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 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 (HCB) Services Manual Section 501]

Information submitted at your hearing reveals that you continue to meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
[REDACTED] Senior Center

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

_____,
Claimant,

v.

Action Number: 08-BOR-1848

**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 November 3, 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 31, 2008 on a timely appeal filed July 29, 2008 and received by the Hearing Officer on August 18, 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
_____, Case Manager, _____ Senior Center
_____, _____ Senior Center
_____, Homemaker, _____ Senior Center

Telephonic participants:

Kay Ikerd, RN, Bureau of Senior Services
Barbara Plum, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, 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 Agency was correct in its proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501, 501.3.1.1 and 501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) completed on June 9, 2008
- D-3 Notice of Potential Denial dated June 16, 2008 and additional medical information
- D-4 Denial notice dated July 7, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical reevaluation to determine if she continues to meet medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on June 9, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified three (3) qualifying deficits for the Claimant in the areas of physical assistance with bathing and grooming, and inability to vacate the building in the event of an emergency.

- 3) The Claimant was sent a Notice of Potential Denial on June 16, 2008 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. Additional information was submitted, however the documentation failed to change the PAS findings.
- 4) The Claimant was sent a final denial notice on July 7, 2008 (D-4).
- 5) During the hearing, the Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Dressing- The Claimant's homemaker testified that the Claimant, who has Chronic Obstructive Pulmonary Disease and uses continuous oxygen, becomes short of breath and requires assistance with dressing. She purported that she was assisting the Claimant with this activity in June 2008 when the PAS was completed. A letter from Dr. [REDACTED] (D-3), which was faxed to the Department on June 23, 2008 in response to the Notice of Potential Denial (D-3) states that the Claimant experiences tremors, making it difficult for her to tie shoes and fasten buttons.

The WVMi Nurse stated that the Claimant had reported she does not wear button-up shirts or shoes with ties on the date of the assessment. She testified that the Claimant reported she can put on and take off T-shirts, and can put on her own socks, slip-on shoes, pants and bra. PAS comments state, "Asked if there was anything she needed assistance with with [sic] her dressing and member states HM will assist her but she can do herself. Member denies any shortness of breath with getting self dressed." The nurse stated that the Claimant's homemaker did not correct the Claimant's statements during the assessment. The homemaker testified, however, that she did not realize she could provide input during the assessment. No information was provided during the assessment concerning the Claimant's reasons for wearing slip-on shoes and pull-over shirts.

The Claimant had reported during the assessment that her homemaker assists her with dressing (although she claimed that she did not need help). In addition, the homemaker testified that she assists the Claimant with dressing due to the Claimant's shortness of breath, and the Claimant's physician indicated that she is unable to tie shoes or fasten buttons due to tremors. Therefore, a preponderance of evidence reveals that the Claimant requires assistance with dressing and one (1) additional deficit is awarded.

Incontinence of bladder- The Claimant's witnesses testified that she has been wearing adult diapers for two years and has protective pads on her bed due to urinary incontinence. The [REDACTED] Senior Center Nurse testified that the Claimant is a private person and is embarrassed to discuss such problems with others.

The WVMi Nurse testified that the Claimant denied bladder accidents during the assessment and said she uses a bedside commode.

While testimony reveals that the Claimant experiences some incontinence, insufficient information was provided to determine the frequency of the Claimant's bladder accidents. Because it cannot be determined whether the Claimant is occasionally incontinent or totally incontinent (more than three accidents per week), no deficit can be awarded in this area.

Physical assistance with eating- The Claimant's homemaker testified that she cuts up the Claimant's food as the Claimant suffers from hand tremors. The letter from Dr. [REDACTED] indicates that the Claimant "often experiences tremors making it difficult if not impossible to cut up food."

The WVMi Nurse testified that the Claimant had reported no difficulties cutting up food or feeding herself during the assessment and her spouse had agreed. Nursing comments on the PAS indicate that the Claimant's spouse reported "they generally just snack on things."

The Claimant testified that she did not understand the WVMi Nurse during the assessment, contending that the nurse had "talked too fast" for her comprehension.

Based on information provided during the hearing, one (1) additional deficit is awarded for physical assistance with eating. The Claimant's homemaker testified that she cuts up the Claimant's food and her physician indicated it would be "difficult if not impossible" for the Claimant to cut her own food. Due to the Claimant's tremors, it is reasonable to believe that she would require assistance in cutting her food.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (D-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.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 (D-1) – 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.

- 8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 (D-1): An individual must have five (5) deficits on the Pre Admission Screening (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

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

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

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

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

Continence (bowel, bladder) -- Level 3 or higher; must be incontinent

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

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

Walking----- Level 3 or higher (one-person assistance 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)

#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 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. The Claimant was awarded three (3) deficits on her June 2008 Aged/Disabled Waiver Program medical reevaluation.
- 2) As a result of information provided during the hearing, two (2) additional deficits are awarded to the Claimant in the areas of physical assistance with dressing and eating, bringing the Claimant's total deficits to five (5).
- 3) The required deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The additional deficits awarded by the Hearing Officer must be considered when determining the Claimant's Level of Care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of November, 2008.

Pamela L. Hinzman
State Hearing Officer