



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 20, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 13, 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
Ultra Care

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

_____,
Claimant,

v.

Action Number: 08-BOR-2012

**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 20, 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 November 13, 2008 on a timely appeal filed August 26, 2008 and received by the Hearing Officer on September 12, 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's daughter and Homemaker
_____, Claimant's granddaughter
_____, Homemaker RN, Ultra Care

Telephonic participants:

Kay Ikerd, RN, Bureau of Senior Services
Melody Lehosit, 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 July 28, 2008
- D-3 Notice of Potential Denial dated July 29, 2008
- D-4 Denial notice dated August 15, 2008
- D-5 Letter from Dr. [REDACTED] dated August 19, 2008

Claimant's Exhibits:

- C-1 Letter from [REDACTED] RN, dated August 4, 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 July 28, 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, dressing and grooming.

- 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 (C-1), however the documentation failed to change the PAS findings.
- 4) The Claimant was sent a final denial notice on August 15, 2008 (D-4).
- 5) During the hearing, the Department conceded one (1) additional deficit to the Claimant for bladder incontinence, bringing the Claimant's total number of deficits to four (4).
- 6) The Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Walking- The Claimant's witnesses indicated that the Claimant has problems with walking as she is unsteady, becomes lightheaded and has shortness of breath.

The WVMi Nurse testified that the Claimant ambulated independently on the date of the assessment. She used walls and furniture to steady herself during her initial steps. The nurse indicated that the Claimant had a steady gait and moved at a reasonable pace. She was rated as requiring prompting/supervision with walking since she had a limited need for assistive devices.

As the Claimant ambulated independently on the date of the assessment – with limited use of walls/furniture to steady herself – the PAS rating of supervised/assistive device is correct and no deficit can be awarded for physical assistance with ambulation.

Orientation- The Claimant's witnesses testified that she experienced confusion during the assessment.

The WVMi Nurse testified that the Claimant had periods of intermittent disorientation during the assessment, but was oriented to person, place and time. She was rated as intermittently disoriented and the nurse explained that an individual must be totally disoriented or comatose in order to receive a deficit for orientation.

As the Claimant was not totally disoriented during the assessment, the PAS rating of intermittent disorientation is correct and no deficit can be awarded in this area.

Physical assistance with eating- The Claimant's daughter testified that she must supervise her mother's meal intake due to her diabetes. She testified that she also cuts up the Claimant's food. The Ultra Care Nurse testified that the Claimant's arthritis has caused obvious knots on her fingers and the Claimant has difficulty cutting food. Exhibit C-1, an August 4, 2008 letter from [REDACTED] RN, was submitted to WVMi in response to the Notice of Potential Denial. This letter states:

The patient apparently, upon questioning, was asked if she needed help cutting up food and she stated no, however she did

not tell the evaluating nurse that she does not cut up her food; she will just pick up a piece of meat and eat it without it being cut up and chew a bite off of the piece of meat with each bite.

An August 19, 2008 letter from Dr. [REDACTED] (D-5) also indicates that the Claimant must gnaw on meat in order to eat it and the PAS notes a diagnosis of dysphagia.

The WVMi Nurse testified that the Claimant prepared and ate a bowl of cereal during the assessment. The Claimant had indicated that she cuts her own food and demonstrated good use of her hands at that time. The nurse indicated that she would have considered awarding a deficit for physical assistance with eating if she had received the information concerning the cutting of foods during the assessment.

As a result of information presented during the hearing, one (1) additional deficit is awarded to the Claimant for physical assistance with eating. It is reasonable to believe that the Claimant's arthritis renders it difficult for her to cut her own meat.

Inability to vacate the building in the event of an emergency- The Ultra Care Nurse testified that the Claimant would require hands-on assistance to vacate the building in the event of an emergency because of her anxiety and nervous nature. She testified that the Claimant would become confused and upset in an emergency situation. Both the letters from Dr. [REDACTED] and [REDACTED] indicate that the Claimant would be unable to evacuate the building unassisted in an emergency situation.

The WVMi Nurse testified that the Claimant demonstrated the ability to vacate her home during the assessment as she stood up and walked out the door. She was assessed as needing prompting/supervision in vacating.

The PAS indicates that the Claimant has been diagnosed with anxiety and experiences hallucinations, and the WVMi Nurse assessed the Claimant as intermittently disoriented. Therefore, it is reasonable to believe that the Claimant would be mentally unable to vacate the building in a stressful, emergency situation and one (1) additional deficit is awarded in this area.

Medication administration- The Claimant's witnesses indicated that she is prompted daily to take her medication and her family performs finger sticks for her diabetes.

The WVMi Nurse testified that the Claimant was assessed as needing prompting/supervision in medication administration on the PAS. She noted that finger sticks are not considered medication administration, but a professional/technical care need.

The Claimant was rated as requiring prompting/supervision on the PAS and this assessment is accurate based on information provided during the hearing. Therefore, no additional deficit is awarded in this area.

7) 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.

8) 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.

9) 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 July 2008 Aged/Disabled Waiver Program medical reevaluation and the Department conceded one (1) additional deficit during the hearing, bringing the Claimant's total number of deficits to four (4).
- 2) As a result of information provided during the hearing, two (2) additional deficits are awarded by the Hearing Officer in the areas of physical assistance with eating and inability to vacate the building in the event of an emergency. This brings the Claimant's total deficits to six (6).
- 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 Department and 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 20th Day of November, 2008.

**Pamela L. Hinzman
State Hearing Officer**