



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

January 31, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 23, 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 503]

Information submitted at your hearing reveals that you do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** 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
Catholic Community Services

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

_____,
Claimant,

v.

Action Number: 07-BOR-2103

**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 January 31, 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 January 23, 2008 on a timely appeal filed August 15, 2007. The hearing was originally scheduled for November 15, 2007, but was rescheduled at the request of the Department. The hearing was then scheduled for December 12, 2007, but was rescheduled by the Hearing Officer.

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:

[REDACTED], Claimant
[REDACTED] Case Manager, Catholic Community Services
[REDACTED] RN, [REDACTED] Senior Center
[REDACTED] Care Provider, [REDACTED] Senior Center
Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)
Debra Lemasters, RN, West Virginia Medical Institute (participated telephonically)

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 is 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 503, 503.1, 503.1.1 and 503.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 503
- D-2 Pre-Admission Screening (PAS) assessment completed on July 3, 2007
- D-3 Notice of Potential Denial dated July 10, 2007
- D-4 Notice of Denial dated July 31, 2007
- D-5 Request for Hearing

Claimant's Exhibits:

- C-1 Correspondence to and from Dr. [REDACTED] dated July 19, 2007
- C-2 Letter from Dr. [REDACTED] dated January 22, 2008 and information concerning Moyamoya Syndrome
- C-3 Letter from Dr. [REDACTED] dated October 30, 2007 (entered, not considered in hearing decision)
- C-4 Recording log signed by [REDACTED] RN, on July 11, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an evaluation to verify his continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on July 3, 2007 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified that the Claimant received three (3) deficits on the Pre-Admission Screening (PAS) assessment in the areas of physical assistance with bathing, physical assistance with grooming, and physical inability to vacate the building in the event of an emergency.
- 3) The Claimant was sent a Notice of Potential Denial on July 10, 2007 (D-3) and was advised that he had two weeks to submit additional medical information for consideration by WVMI. Additional information was submitted, however, the PAS findings remained unchanged.
- 4) WVMI sent the Claimant a Notice of Denial (D-4) on July 31, 2007.
- 5) The Claimant's representatives contended that additional deficits should be awarded in the following areas:

Physical assistance with dressing- Witnesses for the Claimant testified that the Claimant requires physical assistance with dressing because it takes him 45 minutes to dress unassisted. The Claimant's case manager testified that she believes 45 minutes is an excessive amount of time for dressing. The case manager testified that the care provider had believed she was not permitted to assist the Claimant with dressing because it had not been specifically listed on his care plan.

The [REDACTED] Senior Center Nurse testified that she has researched the Claimant's charts and has discovered no changes in his unsteadiness, dizziness and balance since 1995. As a result, she believes he needs physical assistance with dressing. The nurse testified that she visited the Claimant on July 11, 2007 as documented in her recording log (C-4) and observed his unsteady gait. She also indicated that the Claimant is not a good historian due to his medical condition. A letter from Dr. [REDACTED] (C-1) dated July 19, 2007 states that the Claimant "requires the physical assistance with bathing and dressing secondary to his history of CVA." The letter states the physician last examined the Claimant in February 2007.

The WVMI Registered Nurse testified that the Claimant reported dressing himself everyday at the time of the assessment. She stated that the Claimant was dressed appropriately and he denied needing assistance in this functional area.

While it is clear that the Claimant requires an extensive amount of time to dress himself and could benefit from physical assistance in this area, it is undisputed that he had the functional ability to dress himself unassisted on the date of the PAS assessment. Therefore, no additional deficit can be awarded in this area.

Physical assistance with walking and physical assistance with transferring- The Claimant's witnesses testified that he always uses a motorized scooter in his residence however, the scooter was broken at the time of the July 2007 assessment. The witnesses stated that the Claimant never uses a walker in the home and cannot get up when he falls. The Claimant has been diagnosed with Moyamoya Syndrome, a disorder that narrows/closes the major artery delivering blood to his brain. This presence of this condition is medically documented in Exhibit C-2, a letter from Dr. [REDACTED] dated January 22, 2008. The letter verifies that the Claimant has suffered from Moyamoya Syndrome since December 2003.

The WVM Nurse testified that the Claimant used a wheeled, seated walker to ambulate on the date of the assessment, walking a short distance to the dining area and back to his chair. The Claimant's balance was impaired when he turned around to ambulate back to his chair. The nurse indicated that she observed instability of the Claimant's right leg when he ambulated. The Claimant stated that his scooter will not remain charged and he indicated he can only use it for brief periods of time in the home. He stated during the assessment that he walks daily with the wheeled walker and denied any recent falls in the home. The July 19, 2007 letter from Dr. [REDACTED] (C-1) states:

He (the Claimant) requires the assistance of a motorized wheel chair to move around in his home. His motorized wheel chair is not functioning properly and is in need of repair. He is able to ambulate a short distance with the use of a walker, but his gait is very unsteady. He has fallen several times in his home and needs assistance to get up after falling.

In regard to transferring, the WVM Nurse testified that the Claimant rocked back and forth then used the chair arms to push up his body. He indicated during the assessment that he uses wall railing to assist him with transfers from the commode. He also indicated that he uses furniture for support when transferring in and out of bed.

Regardless of whether the Claimant uses a motorized wheelchair or a wheeled walker, he was assessed properly on the PAS as a Level 2 (requiring a supervised/assistive device). While the Claimant's gait is unstable and he needs help getting up when he falls, evidence fails to demonstrate that he receives assistance from other people to ambulate. A physician's statement verifies that the Claimant ambulates with a motorized wheel chair and walker. Therefore, no additional deficit can be awarded for one-person assistance with walking.

In addition, the Claimant reported during the assessment that he transfers by holding onto furniture and wall railing, so no deficit can be awarded for one-person assistance with transfers.

Incontinence of bowel and bladder- Witnesses for the Claimant testified that the Claimant is incontinent of bowel and bladder, and that his care provider frequently finds soiled clothing in his laundry. The care provider testified that all of the Claimant's underclothes are soiled with both urine and stool due to incontinence, however she

indicated that this problem has worsened since July 2007. She indicated that the Claimant soiled himself more than three times per week in July 2007. The care provider was present during the PAS assessment, but did not report this information.

Dr. [REDACTED] July 19, 2007 letter (D-1) states that the Claimant is “occasionally incontinent of bowel and bladder,” but does not specify a frequency.

The WVMI Nurse testified that the Claimant denied incontinence of urine at the time of the assessment, but indicated he changes his clothes about once a week due to bowel accidents. He denied using incontinence supplies.

The Claimant’s witnesses testified that incontinence is a sensitive issue for the Claimant to discuss with others.

Based on testimony provided during the hearing, one (1) additional point is awarded for total bladder/bowel incontinence.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 503 (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 503.1.1 (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 503.2 (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.
- 2) The Claimant received three (3) deficits in July 2007 in conjunction with his Aged/Disabled Waiver Program medical reevaluation.
- 3) As a result of information presented during the hearing, one (1) additional deficit for total incontinence is awarded by the Hearing Officer. This brings the Claimant's total number of deficits to four (4).
- 4) The required five (5) deficits have not 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 **uphold** the Agency's proposal to terminate the Claimant's benefits under the Aged/Disabled, Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of January, 2008.

**Pamela L. Hinzman
State Hearing Officer**