



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

November 7, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 7, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to deny you services under the Aged/Disabled Waiver 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 § 501).

The information submitted at your hearing revealed that you do not meet the medical criteria as set forth in policy to be eligible for the Aged/Disabled Waiver program.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny you services under the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services
West Virginia Medical Institute

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

_____,

Claimant,

v.

Action Number: 08-BOR-2184

**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 7, 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 7, 2008 on a timely appeal, filed September 23, 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, RN, Bureau of Senior Services
Teena Testa, 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 services under the Aged/Disabled Waiver program was correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual, Chapter 500, § 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, Chapter 500, § 501.3.1.1 and 501.3.2
- D-2 Pre-Admission Screening PAS form dated August 29, 2008
- D-3 Potential Denial Notification Letter dated September 4, 2008
- D-4 Denial Notification Letter dated September 19, 2008

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Claimant was evaluated for medical eligibility for the Aged/Disabled Waiver (ADW) program on August 29, 2008. A Pre-Admission Screening (PAS) form was completed that date by Teena Testa, RN of the West Virginia Medical Institute (WVMI).

Claimant was awarded one (1) deficit in the area of vacating (D-2). Four (4) additional deficits were required for Claimant to be eligible for the Aged/Disabled Waiver program.

- 2) A denial notification letter dated September 19, 2008 was issued and read in part (D-4):

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS indicated deficiencies in 1 area. Because

you have less than 5 deficits at the level required, your services are being terminated/denied.

- 3) Teena Testa testified that Claimant was awarded a deficit in vacating because Claimant was mentally unable to vacate in the event of an emergency. Claimant required no assistance in eating, bathing, dressing, grooming, transferring, walking, or medication administration. Claimant was found to be continent of bladder and bowel and was oriented. Claimant did not use a wheelchair in the home. Her vision was impaired but correctable and communication impaired but understandable. Hearing was not impaired. Claimant had no professional or technical needs.
- 4) Claimant testified that she sees a psychiatrist monthly for bipolar disorder. She also has seizures but does not take any medication for them at this time. Claimant stated she needed someone in the home to check on her because of her frequent seizures.

Claimant stated she did not contest any areas of the PAS in which she did not receive deficits.

- 5) Aged/Disabled Home and Community-Based Services Manual § 501 states:

Applicants for the ADW Program must meet the following criteria to be eligible for the program:

C. Be approved as medically eligible for Nursing Facility Level of Care.

- 6) Aged/Disabled Home and Community-Based Services Manual § 501.3.1 states:

- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
- B. Each applicant/client is determined to be medically eligible for ADW services receives 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.

- 7) Aged/Disabled Home and Community-Based Services Manual §501.3.2 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 one (1) deficit on her August 2008 medical evaluation.
- 2) Claimant provided testimony that she did not contest the areas that she did not receive deficits on the PAS. Claimant needs someone to check on her because of her frequent seizures. This medical condition in and of itself does not qualify Claimant for the Aged/Disabled Waiver program.
- 3) Claimant does not meet the medical criteria as indicated in policy 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 services under 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 7th Day of November, 2008.

**Kristi Logan
State Hearing Officer**