



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 8, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 11, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue services under the Aged Disabled Waiver, A/DW, 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 A/DW 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 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 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the August 8, 2007 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BOSS
CCIL
WVMI

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

_____,
Claimant,

v.

Action Number: 07-BOR-2192

**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 December 11, 2007 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 December 11, 2007 on a timely appeal, filed September 17, 2007.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

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 Witnesses:

- _____ - claimant
- Diana _____ – Homemaker RN for CCIL
- Donna _____ – Homemaker for CCIL
- Alta _____ – Social Worker/Case Manager for CCIL
- Billie _____ – RN for CCIL (observing)

Department's Witnesses:

- Kay Ikerd – RN for Bureau of Senior Services by phone
- Debra Lemasters – RN for WVMI nurse by phone

Presiding at the Hearing was Melissa Hastings, 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 was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §570**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community based Services Manual §570, 570.1 a,b.
- D-2 Pre-Admission Screening, PAS, completed August 8, 2007 with Medical Necessity Evaluation Request dated June 4, 2007 attached.
- D-3 Medical statement from _____ MD dated August 29, 2007
- D-4 Notice of potential denial dated September 10, 2007 (Claimant and CCIL)

Claimant's Exhibits:

- C-1 Letter from _____ MD dated November 30, 2007

VII. FINDINGS OF FACT:

- 1) Ms. _____ - is a 75 year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on August 8, 2007.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) (D2) in the claimant's home with the claimant and her homemaker participating. The

evaluating nurse determined that the claimant had only three (3) qualifying deficits. She assigned a deficit for Claimant's need for physical assistance in grooming, dressing and vacating the building.

- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was advanced Parkinson's disease. The physician also notes on the Medical Necessity Evaluation Request (D2) that Claimant is suffering from severe peripheral neuropathy.
- 4) Claimant and her representatives dispute the evaluating nurse's assessment in the areas of bathing and urinary continence.
- 5) The Pre-Admission Screening form (D2 section 26b) indicates the evaluating nurse assessed the Claimant at a level 1 self/prompting for bathing. The evaluating nurse's comments found on page 7 of 9 of this same document states the following:

Tub with shower chair, grab bar on back wall of shower. No grab bars at entrance to shower. Per client she showers at night time. Per HM she refuses to shower during the day when HM present and client stated she wants to take her shower at night and she transfers herself and washes self. Client stated she holds onto towel rack to assist her to transfer in and out of shower. She stated she sits on shower chair. She stated she washes herself, uses long handle brush to wash her back. She reached down to feet at visit and put on her shoes.

- 6) Claimant's testimony indicates that at the time of her assessment she had a homemaker who was lazy and would not assist her. Since that time a new homemaker has been assigned to her and this homemaker does assist her with bathing. At the time of the assessment Claimant's testimony indicates that she took her shower at night as that was the best time of day for her physically to shower herself. Due to her medication schedule she had fewer tremors at that time. Now that she has a homemaker who will assist her with showering, she will shower during the day without fear of falling.
- 7) The Pre-Admission Screening form (D2 section 26e) indicates the evaluating nurse assessed the Claimant at a level 1 Continent of the Bladder. The evaluating nurse's comments on page 8 of 9 of this same document states the following:

Denied incontinence of urine.

- 8) Testimony received from the Claimant indicates that she does experience episodes of urinary incontinence three or more times per week. The medical statement from her physician dated August 20, 2007 (D3) also mentions the issue of urinary and fecal incontinence.
- 9) Aged/Disabled Home and Community-Based Services Manual Section 570 (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.

10) Aged/Disabled Home and Community-Based Services Manual Section 570.1.a – 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.

11) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)
- B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).
 - Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
 - Bathing ----- Level 2 or higher (physical assistance or more)
 - Grooming--- Level 2 or higher (physical assistance or more)
 - Dressing ---- Level 2 or higher (physical assistance or more)
 - Continence-- Level 3 or higher (must be total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
 - Orientation-- Level 3 or higher (totally disoriented, comatose)
 - Transfer----- Level 3 or higher (one person or two person assist in the home)
 - Walking----- Level 3 or higher (one person assist 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)

D. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMI nurse assigned the claimant three (3) qualifying deficits in the areas of dressing , grooming and vacating the building.
- 2) The issues raised at the hearing were in the functional areas of bathing and urinary continence.
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on August 8, 2007. The Claimant's statements regarding the issues of bathing and urinary continence were accepted by the evaluating nurse at that time and utilized in making the decisions on the levels of care assigned based on the criteria found in the Aged/Disabled Waiver Program Policy.
- 4) The medical report issued by the Claimant's physician on August 29, 2007 addresses the issue of urinary continence and was received prior to the agency issuing a notice of potential denial. Once this medical report was received the issue of urinary continence should have been re-examined by the evaluating nurse prior to finalizing the assessment. Testimony received during this hearing reveals that Claimant does meet the requirements to receive a deficit in this area.
- 5) The medical report issued by the Claimant's physician on August 29, 2007 indicates that Claimant has trouble with bathing but there is no definitive statement that she requires assistance to complete this task. Claimant's statement to the evaluating nurse at the time of assessment and her testimony at this hearing indicate that at the time of her assessment in August she was independently bathing herself. Testimony received during this hearing reveals that the Claimant's situation has changed since the assessment and she may currently qualify for a deficit in this area. However, at the time of her assessment in August the evaluating nurse properly assigned the level of care for bathing. Claimant's representatives are aware of the correct procedures necessary for requesting a new evaluation based upon a change in the Claimant's needs.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, the Hearings Officer finds that one additional deficit should be awarded to the Claimant for urinary continence. This brings the total number of deficits awarded to the Claimant to four (4). Regulations require five (5) deficits to qualify for the program therefore the department's proposed action to terminate services through the Aged/Disable Waiver Program is **upheld**.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of January 2008.

**Melissa Hastings
State Hearing Officer**