



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 4, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 6, 2007. Your hearing request was based on the Department of Health and Human Resources' denial of your medical eligibility 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 meet the 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 deny your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl McKinney Henson
State Hearing Officer
Member, State Board of Review

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

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

_____,
Claimant,

v.

Action Number: 07-BOR-2202

**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 6, 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 6, 2007 on a timely appeal filed September 27, 2007.

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
_____, Homemaker, [REDACTED] Home Health
_____, RN [REDACTED] Home Health
_____, Social Worker, CCIL

Kay Ikerd, BOSS - participated telephonically
Michelle Wiley, WVMI, participated telephonically

Presiding at the hearing was Cheryl McKinney Henson, State Hearing Officer and 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 deny 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 August 23, 2007
- D-3 Notice of Potential Denial dated August 30, 2007
- D-4 Hearing Request form dated October 1, 2007

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for eligibility under the Title XIX Aged and Disabled Waiver Program during the month of August 2007.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on August 23, 2007 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified the Claimant received four (4) deficits on the Pre-Admission Screening (PAS) assessment in the areas of vacating a building, bathing, grooming, and dressing.
- 3) The Claimant was sent a Notice of Potential Denial on August 30, 2007 and was advised that he had two weeks to submit additional medical information for consideration by WVMI. No additional information was submitted. (D-3)
- 4) WVMI denied the Claimant, and the Claimant requested a hearing (D-4) on September 20, 2007. The Department received the request on September 27, 2007.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Incontinence: The Claimant was rated as occasionally incontinent. The WVMI nurse recorded the following on the PAS:

He says that if he does not get to the bathroom quick enough, his urine starts leaking. I asked how many days out of seven this occurs. He says, "About two days." I confirmed this with him again. I asked if the incontinence occurs any more than two days per week. He says, "Maybe two or three." He denied this occurring any more often than 2-3 times per week. He denies having incontinence of bowels. Denies the use of depends and pull ups. Was assessed as having no bowel incontinence and occasional bladder incontinence.

The Claimant's homemaker testified that the Claimant has accidents with his urine daily and often. She states his bed is sometimes soaked in the mornings when she gets him up. She states he also has accidents with his bowels on a less frequent basis, maybe two (2) or three (3) per week. The Department's position is that since the Claimant called his accidents "leaking", this is not considered by them to be an incontinence episode. The Department testified that unless the Claimant voided completely on the way to the bathroom this would not be considered an incontinence episode. They stated this is a commonly accepted standard and procedure used by all WVMI nurses in evaluating incontinence. However, they could cite no policy relating to this practice.

Walking: The Claimant was assessed as needing supervised/assistive device. The WVMI nurse recorded the following information on the PAS:

He says that he can only walk short distances using his cane. I asked if he could demonstrate this for me today. He says that he cannot do this because he is having pain in his legs. He says that when he

does walk, it's only a short distance, but he does not walk that often. He says that he can take approximately 6 steps, then has to sit down. He says that he can transfer from bed to power chair himself. He says that he places the power chair close to his bed, so that he does not have to walk to the bed, only transfer. He says that he has to hold to something when he transfers. He has railing beside of the toilet to hold to when he stands from it. Was assessed as requiring physical assistance with standing and walking based on the information provided by member.

The Department testified at the hearing that an error was made in the original PAS and that their position is that the Claimant only needs supervised/assistive device to walk. The Claimant's nurse testified that he is a diabetic with neuropathy, degenerative joint disease, and COPD. She states that he has pain in his legs, shortness or breath, tingling and numbness in his legs, and he has a history of falls when trying to walk. She states that he needs physical assistance with walking, and rarely walks since he has a power chair now. The homemaker testified that the Claimant can only take three (3) to four (4) steps and is so out of breath that he must sit down. She states she must walk with him and she "grabs hold of him" when he tries to walk. The Claimant testified that his aunt comes up and helps him back and forth to the bathroom when he is home alone.

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 –
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 four (4) deficits in August 2007 in conjunction with his Aged/Disabled Waiver Program re-evaluation.
- 3) Evidence and testimony presented during this hearing support the finding of an additional one (1) deficit in the area of incontinence, and one (1) additional deficit in the area of walking, for a total on six (6) deficits.
- 4) The required five (5) 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.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4^h Day of February, 2008

**Cheryl McKinney Henson
State Hearing Officer**