



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 12, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 11, 2008. 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 501]

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 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: 08-BOR-2303

**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, 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 December 11, 2008 on a timely appeal filed October 9, 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
- _____, Claimant's wife
- _____, Claimant's homemaker
- _____, Claimant's Case Manager, CCIL

Kay Ikerd, BOSS - participated telephonically by telephone
Teena Testa, WVMI, participated telephonically by telephone

Presiding at the hearing was Cheryl 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 Section 501

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) assessment completed on September 8, 2008
- D-3 Notice of Potential Denial dated September 11, 2008
- D-4 Notice of Denial letter dated September 29, 2008

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation of eligibility under the Title XIX Aged and Disabled Waiver Program during the month of September 2008.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on September 8, 2008 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, eating, bathing and dressing.

- 3) The Department sent a Notice of Potential Denial (D-3) on September 11, 2008 addressed to Coordinating Council for Independen [sic] advising that the Claimant had two weeks to submit additional medical information for consideration by WVMI. No evidence was provided to show the Claimant received a copy of this notice. No additional information was submitted for consideration.
- 4) The Department sent the Claimant a final notice of denial dated September 29, 2008 which included the following pertinent information:

YOUR REQUEST FOR BENEFITS UNDER THE HOME
AND COMMUNITY BASED AGED/DISABLED
WAIVER PROGRAM HAS BEEN
TERMINATED/DENIED.

REASON FOR DECISION: Eligibility for the
Aged/Disabled Waiver Program requires deficits in at least
5 of the health areas below. Your PAS (Pre-Admission
Screening Form), indicated deficiencies in 4 areas – Vacate
a Building, Eating, Bathing and Dressing.

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

- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Medication Administration: The Claimant was rated as needing “prompting/supervision”. The WVMI nurse recorded the following on the PAS:

MEDS PLACED IN A CUP FOR HIM AND HE HAS TO
BE REMINDED TO TAKE THEM

The Claimant’s homemaker stated that she does place the meds in a cup for him to take and he usually takes them. The Claimant’s wife testified that when the homemaker is not there, she must put the pills in his hand or he will not take them. She gave no reason for this. The Department contends that if the Claimant is capable of taking the meds from a cup when the homemaker is there he should be able to take them from anyone. The Claimant’s Case Manager stated the reason he needs them put in his hand is due to memory problems, not his physical capabilities.

Walking: which is under Functional Abilities: The Claimant was rated as needing “supervised/assistive device”. The WVMI nurse recorded the following on the PAS:

WHEN IT COMES TO WALKING CLIENT WAS
SITTING ON THE COUCH. HE DID USE HIS CANE TO
WALK AND TOOK A COUPLE OF STEPS. CLIENT

STILL DRIVES HIMSELF TO CHURCH. CLIENT DID GRAB A HOLD OF HIS BACK WHEN HE STOOD UP AND STATES HE HAS A BAD BACK AND BAD KNEES. CLIENT DOES USE A WHEELCHAIR IN THE STORES NOW PER BETSY AND BETSY NOTES THEY WHEEL HIM IN THE STORES BECAUSE HE WANTS TO TELL THEM WHERE TO GO. HE NOTES HE DOES NOT GO TO HIS SHED AS MUCH AS HE USED TO.

The Claimant testified that he has a bad hip and it goes out on him sometimes and he falls. The Claimant's homemaker stated that almost on a daily basis she must grab him under the arm when he tries to begin walking because he is very unsteady. The Claimant's wife stated he fell in the bathtub the other night. The Claimant states that usually he can walk by himself with the cane but he never knows when the hip will cause him to lose his balance and fall.

Bowel Incontinence: which is under Functional Abilities: The Claimant was rated as "occasional incontinence". The WVMi nurse recorded the following information on the PAS:

WHEN IT COMES TO HIS BLADDER CLIENT STATES HE DOES HAVE ACCIDENTS ON HIMSELF. CLIENT NOTES HIS LAST ACCIDENT ON HIMSELF WITH HIS BLADDER HAS BEEN A WHILE AND IT DOES NOT HAPPEN AS OFTEN AS WITH HIS BOWELS. WHEN IT COMES TO HIS BOWELS CLIENT DOES HAVE A BOWEL MOVEMENT DAILY. CLIENT NOTES HE WOULD HAVE AN ACCIDENT ON HIMSELF AT LEAST TWICE A WEEK NOT AS OFTEN WITH HIS BLADDER. CLIENT NOTES LAST WEEK HE HAD AN ACCIDENT ON HIMSELF AND STATES IT JUST COMES AND HE DOES NOT KNOW HE WOULD HAVE AN ACCIDENT. HE NOTES IT DOES NOT GIVE HIM ANY WARNING.

The Claimant testified that "it hasn't gotten any better". He states that he has bowel accidents at least twice a week, but often more than that. The Claimant's witnesses indicated his accidents are at least three times or more weekly.

- 6) 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.

- 7) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 states in pertinent part:

– 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 501.3.2 states in pertinent part:

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 2008 in conjunction with his initial Aged/Disabled Waiver Program evaluation.
- 3) The totality of evidence and testimony presented during this hearing support the finding of an additional one (1) deficit in the area of “bowel incontinence”. The WVMI nurse clearly documented that his bowel incontinence was reported as “at least twice weekly”, which is consistent with the witnesses testimony that often his accidents are more frequent than twice weekly. The evidence is not sufficient to establish deficits for walking and medication administration in this instance.
- 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. I order that the Claimant also be assessed points in relation to the deficit awarded in arriving at a level of care determination.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th day of December, 2008

**Cheryl Henson
State Hearing Officer**