



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 8, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 13, 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
Integrated Resources

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

_____,
Claimant,

v. **Action Number: 07-BOR-2310**

**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 13, 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 13, 2007 on a timely appeal filed October 16, 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
_____, Nurse RN, Integrated Resources
_____, Homemaker, Integrated Resources

Kay Ikerd, BOSS - participated telephonically
Teena Testa, 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 September 17, 2007
- D-3 Notice of Potential Denial dated September 24, 2007
- D-4 Notice of Denial dated October 9, 2007
- D-5 Copy of Request for Hearing form dated October 11, 2007
- D-6 Letter from Dr. _____, M.D. dated October 8, 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 September 2007.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on September 17, 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 eating, bathing, grooming, and dressing.
- 3) The Claimant was sent a Notice of Potential Denial (D-3) on September 24, 2007 and was advised that he had two weeks to submit additional medical information for consideration by WVMI. The Department received no further documentation and subsequently sent the Claimant a final denial letter on October 9, 2007.
- 4) The Claimant submitted, during the hearing, a letter dated October 8, 2007 from Dr. _____, M.D. (D-6) The homemaker testified that the case manager in charge of the Claimant's care received this letter timely but failed to forward to the Department for consideration during the two week period given. In the letter, the doctor indicates that the Claimant has the following diagnoses:

- **Major Depressive Disorder, recurrent, moderate without psychotic features
- **Panic Disorder without agoraphobia
- **Extremely Low classification of intellectual functioning (IQ 72)
- **Breathing problems, chronic pain
- **Problems with primary support
- **GAF 49
- **Prognosis – Poor

The doctor goes on to describe in the letter an incident that occurred in 2001. The area the Claimant lives in became flooded and he became very panicked and was unable to leave his home, even though his home was filled with water. A neighbor rescued him. The doctor goes on to explain that it is doubtful that the Claimant would be able to leave his home in case of an emergency.

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

Vacating the home: The Claimant was rated as needing supervision. The WVMI nurse recorded the following on the PAS:

In the event of an emergency client states he feels he would be able to exit out of the home. Client does take little steps but he does not use any medical devices. I feel the client would need supervision. Client does not use any medical devices as he walks throughout the home. I did ask the client to show me how he walks in the home and he got himself off the couch. He states he does have to take little steps. He states "If I go fast then I would do a nose plow."

The Claimant's nurse testified the Claimant could not get out of the home without physical assistance in the event of an emergency. She attributes this to the physical and mental difficulties the Claimant is faced with. She states that during the flood of 2001 the water was up to the Claimant's armpits in his home and he could not leave. Someone had to go in and rescue him. She states that he panics, and in addition to this his Parkinson's limits his speed in walking.

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 September 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 vacating the home in an emergency, for a total of five (5) deficits. It is clear that the Claimant's physical condition limits his ability to exit quickly due to his having to take very small steps, and would require someone physically helping him by holding on to him during a quick exit.
- 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 8th Day of February, 2008

**Cheryl McKinney Henson
State Hearing Officer**