



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 28, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 29, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of medical eligibility for services under the Aged Disabled Waiver, ADW 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 ADW 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 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the September 18, 2007 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the action of the Department to terminate services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Oretta Keeney, WVMI
Case Manager, Senior Life Services of [REDACTED]

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

_____,
Claimant,

v.

Action Number: 07-BOR-2399

**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 January 29, 2008 for _____ on a timely appeal filed October 31, 2007. 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 hearing was originally scheduled for January 9, 2008 and a continuance was granted to the claimant. A second request, by the claimant, for a continuance was denied and instead this Hearing Officer has allowed a late submission of a Doctor's statement.

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

_____, claimant's husband

_____ claimant's minister

_____, claimant's daughter

_____ claimant's homemaker, _____ Senior Services

_____ homemaker RN, Senior Life Services of _____

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone

Tammy Kessell, WVMI nurse, by speakerphone

Presiding at the Hearing was Sharon K. Yoho, 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 deny medical eligibility for services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §500 and Attachment 14**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §503 thru 503.4

D-2 Pre-Admission Screening, PAS, completed September 18, 2007

D-3 Eligibility Determination dated September 18, 2007

D-4 Notice of potential denial dated September 26, 2007

D-5 Notice of denial dated October 23, 2007

Claimant's Exhibits:

C-1 Doctor's note dated September 27, 2007

C-2 Senior Life Services letter to claimant's Doctor dated August 27, 2007

C-3 Letter from _____ dated November 6, 2007

C-4 Statement from Behavioral Health Services date October 16, 2007

C-5 Letter from Doctor dated February 15, 2008, supplied subsequent to the hearing

VII. FINDINGS OF FACT:

- 1) This claimant is a 51-year-old female with primary diagnosis of Hypertension, Hypothyroid Disease, Gerd and Depression. The claimant's current Aged Disabled Waiver case was undergoing a reevaluation in September 2007.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on September 18, 2007 with the claimant and no other persons present. WVMI notifies their clients well in advance of the scheduled visit with a copy to the case management agency. This allows time for others to arrange to be present for the assessment. The claimant was under the influence of Oxycodone and Percocet at the time of the evaluation. Oxycodone was a listed medication on the PAS. The nurse determined from observation and the answers given to her at the assessment that three qualifying deficits could be awarded. These deficits were assessed in the area of bathing, dressing and incontinence.
- 3) The claimant and her witnesses raised issue in the areas of medication administration, eating and vacating in the event of an emergency. They also raised issue with the nurse completing the evaluation with the claimant alone and suggested that the PAS had inaccuracies due to this.
- 4) The claimant advised the nurse on the date of the assessment that she was not familiar with her pills and that her spouse takes care of them. The claimant's husband hands her the pills she is to take. The daughter states that sometimes her mother will drop her pills. The husband reports that sometimes the pills will roll out of her mouth before she has gotten them down. This claimant has been hospitalized for an overdose situation in the past. The evaluating nurse assessed this claimant as needing prompting and supervision with administering medication. A statement form Behavioral Health Services, Exhibit C-4, states that the claimant continues to need help with the management of her medications.
- 5) The claimant reported to the evaluating nurse that she has difficulty with cutting her meat. She related that the knife slides out of her hand. The husband testified that he does have to cut her meats for her. The nurse determined that the claimant is able to cut her own meat because the claimant reported that she could use fingernail clippers to clip her nails. The nurse also observed a moderately equal strong hand grip.
- 6) At the evaluation, the claimant advised the nurse that she could probably get out if there was an emergency. She walked out on the porch when the nurse was leaving her home using no cane or walker. The nurse observed her ambulate without difficulty many times during the visit. The claimant's wheel chair is kept on the porch, as it is too wide to get through the door to the home. The can use the wheelchair once out on the porch. The nurse assessed the claimant as being independent in vacating the home.
- 7) The claimant's case management agency was advised that they were to send an expected Doctor's statement to both the Hearing Officer and to the Department by February 15th. The Department was given 10 days to respond to this late piece of evidence. Senior Life Services of [REDACTED] sent the Doctor's letter to the Hearing Officer, but failed to provide a copy to the Department.

8) The Hearing Officer Faxed a copy of the Doctor's letter to the Department and received their reply on February 25, 2008. The Doctor suggested that it would be in the best interest of the claimant to be reevaluated due to the last evaluation had lapsed and her health and physical mobility had changed in the last few months. The Department's response was that the events of the past few months are not relevant to the claimant's condition at the time of the September PAS. They further replied that the Doctor's statement offered no specific information regarding the claimant's functional abilities in September.

9) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

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 503.1: MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the ADW Program.

11) 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 members are medically eligible based on current and accurate evaluations.

B. Each applicant/member determined to be medically eligible for ADW 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.

12) Aged Disabled Home and Community-Based Services Manual Section 503.2 MEDICAL CRITERIA:

An individual must have five deficits on the Pre-Admission Screening Form (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 to vacate 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. (Item 25 on the PAS 2005).

- a. Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
- b. Bathing ----- Level 2 or higher (physical assistance or more)
- c. Grooming--- Level 2 or higher (physical assistance or more)
- d. Dressing ---- Level 2 or higher (physical assistance or more)
- e. Continence-- Level 3 or higher; must be incontinent
 bowel
- f. Continence-- Level 3 or higher; must be incontinent
 bladder
- g. Orientation-- Level 3 or higher (totally disoriented, comatose)
- h. Transfer----- Level 3 or higher (one person or two person assist in the home)
- i. Walking----- Level 3 or higher (one person assist 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 B (g)suctioning, (h)tracheostomy, (i)ventilator, (k)parenteral fluids, (l)sterile dressings, or (m) irrigations.

#28 The individual is not capable of administering his/her own medications.

13) Aged Disabled Home and Community-Based Services Manual Section 503.4
MEDICAL REEVALUATION:
Annual reevaluations for medical necessity for each ADW member must be conducted.

14) Attachment 14, Pre-Admission Screening PAS
28. Individuals is capable of administering his/her own medications (check only one).
 a. Yes **b.** With Prompting/Supervision **c.** Comment:

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, determine that the claimant had only three qualifying deficits in the area of bathing, dressing and incontinence.
- 2) The claimant advised the nurse that she was not familiar with her medication and that her husband takes care of it. Policy 503.2 #28 provides that a deficit is awarded if the individual is not capable of administering his or her own medications. Attachment 14 which offers guidance for the evaluating nurse in completing a PAS includes two areas that can be marked regarding whether the client can administer their own medication. The first is (YES) the second is (With Prompting and Supervision). Policy is void of any explanation as to the use of the term administering. Webster identifies the meaning of the term administering, "to manage or supervise the execution, use, or conduct of." The Farlex dictionary offers the meaning, "to have charge of, manage, give or apply (medications), dispense, direct the taking of." It is clear that this claimant has to have others be in charge, manage and to dispense her medication. The evaluating nurses have received instruction to not assess a deficit if the claimant needs only prompting and supervision. This claimant could not administer her own medication even after it was put in reminder boxes for her. This claimant needs more than prompting and supervision.
- 3) The claimant advised the evaluating nurse of her need for others to cut her meat and that a knife slides out of her hand. The nurse made a judgment call based on the claimant's ability to use fingernail clippers. It is reasonable to believe that a person could use fingernail clippers, which requires primarily finger dexterity and strength, and still not be able to hold a knife safely in the hand. It is clear that this claimant needs hands on assistance for eating.
- 4) Evidence and testimony did not support the need for hands on assistance to vacate the home in the event of an emergency. She could independently vacate with supervision.
- 5) The claimant should have been assessed five (5) qualifying deficits in bathing, dressing, incontinence, medication administration and eating.
- 6) Evidence and testimony does strongly suggest that this heavily medicated client should have had others participating in her evaluation. While the claimant did not have a diagnosis related to diminished mental capacity, it is reasonable to believe that the evaluation should not have been completed without informals or someone from the case management agency present and participating.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was incorrect in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **reverse** the Department's action to discontinue services under the Aged Disabled Title XIX (HCB) Waiver program. I rule that the Department assess the claimant with the above qualifying deficits and the associated points for determining the level of care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of February 2008.

**Sharon K. Yoho
State Hearing Officer**