



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

January 16, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 9, 2008. Your hearing request was based on the Department of Health and Human Resources' proposed termination of 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 26, 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 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
[REDACTED] Central WV Aging Services

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

_____,
Claimant,

v.

Action Number: 07-BOR-2425

**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 9, 2008 for _____ - on a timely appeal filed November 8, 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.

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 granddaughter
_____, CM Central WV Aging Services

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 discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

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

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 26, 2007
- D-3 Eligibility Determination dated September 26, 2007
- D-4 Notice of potential denial dated October 4, 2007
- D-5 Notice of denial dated October 22, 2007

VII. FINDINGS OF FACT:

- 1) This claimant is an 86-year-old female whose Aged Disabled waiver case was undergoing a re-evaluation in September 2007. She has primary diagnoses of CAD, DJD, GERD, Hypertension, High Cholesterol and Vitamin B12 deficiency. Other diagnosis are Exertional Angina, Fall history, Bowel/Bladder incontinence, arthritis, anxiety, dyspnea, mixed dementia, seriously impaired judgment and multi infarct.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on September 26, 2007 with the claimant and her homemaker present. Her granddaughter was present briefly at the very beginning of the assessment. The nurse determined from observation and the answers given to her at the assessment that only one qualifying deficits in grooming could be awarded.

- 3) The claimant's case manager introduced the issues of orientation, medication administration, vacating in an emergency, incontinence, dressing and bathing.
- 4) The claimant advised the evaluating nurse at the assessment that she could get out of the home if there was an emergency. The nurse observed the claimant transfer and ambulate and noted the claimant to be oriented. She therefore assessed the claimant to have the ability to vacate independently. The claimant's homemaker testified to her belief that due to the claimant's dementia and impaired judgment that she would need hands on assistance to vacate in the event of an emergency. This claimant's home has burned since the time of the PAS and the claimant was found sitting in her bedroom in a state of confusion. Her nephew had to physically take her out of the burning home.
- 5) The claimant advised the nurse during the PAS that she dresses herself and if she needs some help she hollers and asks for it. The claimant's homemaker had helped her with her buttons that morning but the claimant told the nurse that she could do her own buttons. The niece testified that the claimant has poor balance and that she has to help her dress to avoid falls. The claimant testified that she does need help with dressing because she loses her balance. The PAS notes a history of falls.
- 6) The case manager referred to two areas in the PAS where the nurse notes the claimant's inability to remember events. The claimant's niece relates that her grandmother has to be reminded to take her medication and to take a bath. She also states that her grandmother at times will not recognize her. The PAS notes, in the diagnosis section, mixed dementia and seriously impaired judgment. The Department representative testified that memory problems are not the same as disorientation problems.
- 7) The PAS notes a diagnosis of incontinence and testimony supports incontinence occurring two or three times per week. The niece testified that the claimant wears pads. The claimant told the nurse at the assessment that she did not have accidents and that she makes it to the bathroom in time. She told her that if there was someone in there, she just tells them to get out. She advised the nurse at the PAS that she did not wear pads.
- 8) The claimant advised the nurse that she did not need anyone to help her with her bath and that she sits on the commode and washes herself in the sink. The homemaker told the nurse that the claimant pretty much does her bath on her own. The niece testified that she helps her grandmother wash her legs and back and that her grandmother will not let anyone except family help with bathing. The claimant testified that she told the nurse that she could bath herself because she did not want the nurse to bath her.
- 9) The claimant is able to take her own medication. She requires prompting and very close supervision in this activity.
- 10) 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.

**11) 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.

**12) 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.

**13) 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--
bladder | Level 3 or higher; must be incontinent |
| 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.

- 14)** 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.

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 one qualifying deficits in the area of grooming.
- 2) Evidence and testimony provided for this hearing did support that a deficit should have been assessed in the area of dressing at the time of the PAS. The claimant advised the nurse that she asks for help in dressing if she needs it, which indicates her occasional need for help. The homemaker did her buttons for her that morning which supports her need for help in dressing. Testimony of the claimant's loss of balance and diagnosis of history of falls supports the need for assistance in dressing.
- 3) Evidence and testimony supports that the claimant would need physical assistance to vacate in the event of an emergency. Her diagnosis of seriously impaired judgment speaks to this fact. Testimony of the claimant's inaction during an actual house fire strongly supports that her impaired judgment is a factor in her inability to vacate independently.
- 4) The Department was correct in their decision not to assess a deficit in the areas of orientation, medication, incontinence and bathing. While the claimant does have dementia and impaired judgment, this is not the same as a condition of total

disorientation. Policy provides that the client must be totally disoriented or comatose in order for the nurse to assign a deficit. The claimant clearly can take her own medication with supervision and prompting. The claimant does experience some incontinence however, policy stipulates that if the incontinence is less than three times per week the Department is to consider this as occasional incontinence, which constitutes no deficit. The claimant was reported to be incontinent two or three times per week which averages to less than three times per week. Testimony regarding bathing did not conclude that the claimant does not have the ability to bath herself. It only supported that she sometimes gets help in this activity.

- 5) While the claimant should have been assessed additional deficits in the areas of dressing and vacating, the total number of deficits would still fall below the five (5) necessary for approval.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was correct in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **uphold** the Department's action to terminate this claimant's services under the Aged Disabled Title XIX (HCB) Waiver program.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of January 2008.

**Sharon K. Yoho
State Hearing Officer**