



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 25, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 19, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through 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]

The information submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services through the Medicaid, Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

_____,
Claimant,

v.

Action Number: 07-BOR-2503

**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 February 25, 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 February 19, 2008 on a timely appeal filed November 14, 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, Mountain Cap
[REDACTED] LSW, BoSS (Participated telephonically)
Christine Miller, RN, WVMI (Participated telephonically)

Presiding at the hearing was Thomas E. Arnett, 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 Agency was correct in its decision to propose termination of the Claimant's benefits and services through the Aged & Disabled Home and Community-Based Waiver Services 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 October 2, 2007
- D-3 Notice of Potential Denial dated October 11, 2007
- D-4 Notice of Termination/Denial dated October 29, 2007

VII. FINDINGS OF FACT:

- 1) On October 2, 2007, the Claimant was evaluated (medically assessed) to determine continued eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on 10/2/07}.
- 2) On or about October 11, 2007, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2.

Based on your PAS you have deficiencies in only 2 areas – Bathing and Dressing.

This notice goes on to advise the Claimant that she can provide additional information regarding her medical condition within 2-weeks for consideration before a final decision is made. However, if no additional information is received within 2 weeks from the date of the notice, she will be sent a denial notice.

It should be noted that no additional information was received.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated October 29, 2007 (Exhibit D-4). This notice states, in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

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 2 areas – Bathing and Dressing.

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

- 4) The Claimant and her representative contend that she should have been awarded a deficit in Grooming, Incontinence and Vacating the building in the event of an emergency.

- With regard to *Grooming*, the Claimant and her witness purported that the Claimant needs assistance with grooming, specifically with washing and combing her hair as well as clipping her fingernails. According to testimony presented by and on behalf of the Claimant, the Claimant is reportedly unable to hold her hands above her head for very long and because her hands bother her, sometimes she is unable to clip her nails. The Department's witness cited documentation found on Page 8 of 9 in Exhibit D-2 and stated that the Claimant reported at the time of the assessment that she can wash and brush her own hair and demonstrated mobility in her arms by reaching up to the top of her head "without difficulty." The Claimant acknowledged that she sometimes has difficulty clipping her fingernails but this activity, as noted by the WVM RN, does not need to be completed daily and could be done as the Claimant is able. The Claimant demonstrated the ability to wash and comb her hair and it is not unreasonable to expect that she would clip her fingernails on those days when she is able. Based on this evidence, a deficit in grooming cannot be established.

- The PAS evaluation (Exhibit D-2) indicates under Section #26e (*bladder incontinence*) and 26f (*bowel incontinence*) that the Claimant was assessed at a level 2 (occasional incontinence) in each of these areas. In order for an individual to be assessed as incontinent of bowel or bladder, the individual must experience episodes of incontinence three (3) or more times per week. The Claimant testified that she would typically experience as many as two episodes of bladder incontinence per week and one (1) episode of bowel incontinence per week. Testimony received at the hearing is consistent with the evidence found on page 8 of 9 in Exhibit D-2 that indicates bowel and bladder incontinence less than three (3) times per week. The Claimant does not wear any protective pads and the evidence confirms that she does not experience incontinence of bowel or bladder three (3) or more times per week. The evidence confirms that the Claimant has been correctly assessed at a level 2 in bowel and bladder incontinence and a deficit cannot be awarded.

- The Claimant reported during the assessment that she couldn't get out of her home (*Vacate*) during an emergency because of nerves and anxiety as well as difficulty with mobility. She reported she can fall easily because her legs get out from under her easily. Testimony received at the hearing by the Claimant and her witness reveals that the Claimant's apartment is located on the third (3rd) floor of her building and if the power was out, she would not be able to traverse the three flights of stairs to exit safely. The Claimant ambulates with a quad cane when out of her home and reported that she must sometimes use it in the home when she is experiencing pain. The WVMi RN assessed the Claimant as needing supervision when vacating her building during an emergency as the Claimant ambulated in and around her home on the day of the assessment without the use of her cane or any other support. While the Claimant was given the benefit of doubt and assessed a level 2 in walking and transferring, there is insufficient evidence to indicate that the Claimant would require hands-on physical assistance to vacate her building in the event of an emergency. Based on the evidence, the Claimant could vacate with supervision and has been correctly assessed by the Department.

5) 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.

6) 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.

7) 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 can vacate the building:
a) Independently, b) with supervision, c) mentally unable or d) physically unable to vacate a building. Vacating Independently or with Supervision are not considered a deficit.

#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 states that an individual must have five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded two (2) deficits on a PAS assessment completed by WMI in October 2007 – Bathing and Dressing.
- 3) The evidence submitted at the hearing fails to confirm any additional deficits.
- 4) Whereas the Claimant demonstrates two (2) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's benefits and services through the Medicaid, 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 25th Day of February, 2008.

**Thomas E. Arnett
State Hearing Officer**