



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

April 18, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 9, 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 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 Henson
State Hearing Officer
Member, State Board of Review

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

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

_____,
Claimant,

v.

Action Number: 07-BOR-2530

**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 April 9, 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 April 9, 2008 on a timely appeal filed November 28, 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 Council on Aging
_____, Claimant's daughter

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

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 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 18, 2007
- D-3 Notice of Potential Denial dated October 24, 2007
- D-4 Notice of Denial dated November 8, 2007
- D-5 Claimant's request for hearing

Claimant's Exhibits:

- C-1 Medical from [REDACTED] General Hospital

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an initial evaluation of eligibility under the Title XIX Aged and Disabled Waiver Program during the month of October 2007.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on October 18, 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 bathing, grooming, dressing, and continence.
- 3) The Department sent a Notice of Potential Denial (D-3) on October 24, 2007 to the Claimant's physician; however, the Claimant did not receive a copy of this letter.
- 4) The Department sent the Claimant a Notice of Denial (D-4) on November 8, 2007. The Claimant requested a hearing on November 28, 2007.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Ability to Vacate a building: The Claimant was rated as needing supervision to vacate a building in the event of an emergency. The WVMI nurse recorded the following pertinent information on the PAS:

In the event of an emergency daughter states she does not feel her mother could exit out of the building. During the assessment the client did get up and walk to the other room and back. Her gait was steady. I feel the client would need supervision to exit the building. She was able to follow commands without and [sic] difficulty.

The Claimant testified that during the assessment she walked to the door for the nurse – approximately five (5) to seven (7) steps. The daughter testified that during a recent fire in her mother's home, she called her to come to the house. The daughter stated that she had to go into the home and grab her mother by the arms and lead her outside. She states her mother would not leave the home before she arrived. The homemaker stated that the Claimant's medication makes her disoriented and sometimes she has to pound on the door to get her to respond, and has trouble opening doors.

Orientation: which is under Functional Abilities. The Claimant was rated as intermittently disoriented. The WVMI nurse recorded the following on the PAS:

When it comes to her orientation client denies getting who she is confused. Daughter states night before last she hit the number on the phone to call her daughter and the daughter states she has mini strokes. Client states she does not remember calling her daughter. Client states her aunt called her and informed her she had called her but the client does not remember doing this either. Daughter states she knows who she is but she does get confused a lot. Client states she does not get her home confused. Client states she does loose

[sic] track of the day, day and month. Client notes once reminded she does remember.

The Claimant stated that she does know where she is, but gets her days mixed up. She states she thinks it is because of her medication.

Transferring: which is under Functional Abilities. The Claimant was rated as being able to transfer independently. The WVMI nurse recorded the following pertinent information on the PAS:

When it comes to transferring client is able to sleep in her bed. Client states she is able to get herself in and out of her bed. Client states she is able to get herself up and down from the commode. She notes at times it is hard for her but she manages. Client was sitting in her chair upon my arrival. She was able to lean forward during the assessment with her elbows placed on her knees.

The Claimant states she is very weak and has spells two to three times per week. She gets disoriented, stutters and her left side is heavy. The Claimant's daughter testified that she helps her in and out of bed by grabbing under her arms in front of her as well as in the bathtub. She also helps her to the chair and sofa.

Walking: which is under Functional Abilities. The Claimant was rated as walking independently. The WVMI nurse recorded the following pertinent information on the PAS:

When it comes to walking client states she has been using her walker in the home. She notes she also has a cane she keeps in her car. I did ask the client to show me how she walks in the home. Client was able to get herself up and walk to the other room without any medical devices. She did put her left arm to her back and walked back to the chair and sat down. Gait was steady.

The Claimant testified most of the time she can walk pretty well, but she has days when her knees and ankles bother her. She states she has episodes once or twice a month and it sometimes lasts four or five days. The Claimant's daughter stated her mother gets gout sometimes twice in a six month period.

- 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 her Aged/Disabled Waiver Program initial evaluation.
- 3) Evidence and testimony presented during this hearing support the finding of an additional one (1) deficit in the area of vacating a building, and one (1) additional deficit in the area of transferring, for a total of six (6) deficits. The Claimant's daughter clearly indicated to the Department during completion of the PAS that she felt her mother could not vacate the building in an emergency, and evidence and testimony presented during the hearing substantiate this finding. Evidence also supports the finding of a deficit for transferring.
- 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 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 18th Day of April, 2008

**Cheryl Henson
State Hearing Officer**