



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

March 28, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 26, 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 October 2, 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 deny 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, WVM I

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

Claimant,

v.

Action Number: 07-BOR-2548

**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 telephonic fair hearing concluded on March 26, 2008 for _____ on a timely appeal filed November 14, 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

Department's Witnesses:
Angel Khosa, Bureau of Senior Services
Tammy Kessell, WVMI nurse

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

All participants appeared by speakerphone

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in their decision to deny 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 October 24, 2007
- D-3 Notice of potential denial dated October 29, 2007
- D-4 Notice of denial dated November 14, 2007

VII. FINDINGS OF FACT:

- 1) This claimant is a 70-year-old male who lives alone and has primary diagnoses of Coronary Artery Disease and Hepatic Encephalopathy.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on October 24, 2007 with the claimant and his sister present. The nurse determined from observation and the answers given to her at the assessment that only one qualifying deficit could be awarded. That qualifying deficit was in the area grooming.
- 3) The claimant introduced issues in areas related to Orientation and Walking.

- 4) The evaluating nurse at the assessment noted that the claimant was alert and oriented to person, place, and time. He was able to date the consent himself. He advised the nurse that he was forgetful but denied confusion.
- 5) The claimant testified that he experiences black out spells. The nurse noted that he reported black out spells. The nurse testified that black out spells are not related to a condition of disorientation. She testified that when the claimant's ammonia levels are high he does experience black out spells.
- 6) At the time of the assessment, the nurse observed the claimant ambulate using no assistive device. He did hold on to furniture and other things as he walked. He did not report to the nurse any falls or any need to have others assist him in walking.
- 7) The claimant testified that he has a pinched nerve in his back and on occasion it will cause his legs to give out and he will fall. He did not indicate that he needs hands on assistance while walking.
- 8) The claimant testified that he is in need of help around the house for housekeeping tasks and needs someone to transport him to doctor appointments and other places he needs to go. He currently is receiving homemaker services through the Lighthouse program of two hours per day. He has to pay others to come, clean his house, and cut his grass.
- 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.

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 not support that any additional deficit should have been assessed. Policy is clear that for a deficit in walking, the claimant must need hands on assistance from others to walk in his home. He clearly is able to walk without the assistance of others. Policy states that to receive a deficit for orientation, the person must be totally disoriented or comatose. This claimant represented himself in this hearing and showed no evidence of being disoriented.
- 3) It is understood that this claimant has a need for assistance in his home with household chores and for transportation. He does not require personal assistance in his Adult Daily Living functions to the extent that he would qualify for nursing facility placement. The ADW program is a waiver program for those who qualify medically for nursing home placement but have chosen to reside in their own home with the assistance of homemakers. The Department was correct in the assessment completed on October 24, 2007.

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 deny this claimant 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 28th Day of March 2008.

Sharon K. Yoho
State Hearing Officer