



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 22, 2008

Dear Mr. _____:

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 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 not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

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

_____,
Claimant,

v.

Action Number: 07-BOR-2634

**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 22, 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 December 13, 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
_____, Case Manager, Central West Virginia Aging Services
Pastor _____, Claimant's Power of Attorney
_____, RN, Bureau of Senior Services (participated telephonically)
Traci Gillispie, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 is correct in its proposal to terminate 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 November 13, 2007
- D-3 Notice of Potential Denial dated November 20, 2007
- D-4 Notice of Denial dated December 6, 2007

Claimant's Exhibits:

- C-1 Letter from Claimant's Homemaker, _____
- C-2 Plan of Care

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an evaluation to verify his continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a medical assessment (D-2) on November 13, 2007 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified that the Claimant received three (3) deficits on the Pre-Admission Screening (PAS) assessment in the areas of physical

assistance with grooming, bladder incontinence and mental inability to vacate the building in the event of an emergency.

- 3) The Claimant was sent a Notice of Potential Denial on November 20, 2007 (D-3) and was advised that he had two weeks to submit additional medical information for consideration by WVMi.
- 4) WVMi sent the Claimant a Notice of Denial (D-4) on December 6, 2007.
- 5) The Claimant's representatives contended that additional deficits should be awarded in the following areas:

Physical assistance with bathing- The Claimant's case manager provided a letter from his homemaker (C-1) indicating that the homemaker assists the Claimant with his shower by washing his back and hair. The case manager also provided a Plan of Care (C-2) which states that the Claimant requires supervision in the shower. It was noted that the Claimant also receives assistance with bathing because of dizziness.

The Claimant had been rated as a Level 1 (self/prompting) in regard to his ability to bathe. PAS recordings indicate the Claimant had informed the WVMi Nurse he receives assistance with washing his back and hair because he forgets to do so. The nurse had contended the Claimant is physically capable of washing himself and that forgetting to wash would indicate the need for a prompt.

*Based on information provided during the hearing, the Claimant is awarded one (1) additional deficit in the area of physical assistance with bathing. The Claimant's homemaker provided correspondence indicating that she washes the Claimant's back and hair, and the Claimant had reported this information at the time the PAS was completed. As the Claimant's primary diagnosis is schizophrenia, it is reasonable to believe that he requires assistance with the bathing process due to difficulties with memory. The WVMi Nurse had indicated that the Claimant is physically able to wash himself. It should be noted that the Claimant would also be **physically** able to vacate the building in the event of an emergency, however, he was granted a deficit for vacating based on his mental incapacity.*

Inability to administer medication- The homemaker's letter indicates that she reminds the Claimant to take his medication. The case manager testified that the Claimant's mother, who is deceased, previously reminded him to take his medication and that he now has no family support. The Claimant's minister testified that the Claimant is functioning well as a result of his care provider's assistance and he fears the Claimant will regress without homemaker services.

The Claimant was rated on the PAS as requiring prompting/supervision in regard to medication administration. The PAS states that the Claimant reported he has memorized his medications by color and shape, and that he sorts the medicine and places it into a pill box. He had reported that he sometimes forgets to take his medication and the homemaker reminds him.

Based on information provided during the hearing, the PAS rating of prompting/supervision in regard to medication administration is correct. Therefore, no deficit can be awarded in this area of functionality.

Skilled needs (weekly blood work) - The case manager testified that the Claimant must have blood work on a weekly basis and that this procedure should be considered a skilled/technical need.

The BoSS Nurse testified that blood work is not a skilled need for which the Claimant can receive a deficit under policy.

No additional deficit can be awarded for skilled needs as per policy.

- 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 (D-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 three (3) deficits in conjunction with his November 2007 Aged/Disabled Waiver Program medical reevaluation.
- 3) As a result of information presented during the hearing, one (1) additional deficit for physical assistance with dressing is awarded by the Hearing Officer. This brings the Claimant's total number of deficits to four (4).
- 4) The required five (5) deficits have not 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 **uphold** the Agency's proposal to terminate the Claimant's benefits under the 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 22nd Day of February, 2008.

**Pamela L. Hinzman
State Hearing Officer**