



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 6, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 26, 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 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 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-2660

**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 26, 2008 for _____ on a timely appeal filed December 17, 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

_____, Homemaker, Central WV Aging Services

_____, Case Manager, Central WV Aging Services

_____, Homemaker RN, 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 October 2, 2007

D-3 Eligibility Determination dated October 2, 2007

D-4 Notice of potential denial dated October 26, 2007

D-5 Notice of denial dated November 27, 2007

VII. FINDINGS OF FACT:

- 1) This claimant is a 44-year-old female whose Aged Disabled waiver case was undergoing a re-evaluation in October 2007. She has primary diagnoses of Peripheral Neuropathy, Obesity, Back Pain and Asthma.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on October 2, 2007 with the claimant, her homemaker RN, a friend and her 3-year-old grandson 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 incontinence.

- 3) The claimant introduced issues in the areas of Decubitus, Vacating in an Emergency, Bathing, Walking, Transferring and Medication Administration.
- 4) The evaluating nurse at the assessment was advised that there were no Decubitus ulcers. The claimant's issue at the hearing was regarding calluses on her feet that sometimes crack and open.
- 5) At the time of the assessment, the nurse observed the claimant ambulate using a cane in one hand and using the other hand on a railing in the hallway and on the walls. The nurse noted that although the claimant was unsteady and had a slight problem with balance, she did not require hands on assistance to ambulate. The claimant told the nurse during the assessment that she could not walk or stand for any period of time. The claimant testified that she does need someone close when she ambulates since she has fallen.
- 6) The claimant advised the nurse at the assessment that she was sure that she could vacate in the event of the emergency and indicated that she would probably be getting her animals out as well. The claimant testified that in order for her to vacate the home, she would have to get down 10 steep steps outside of her bedroom or 26 steps to get out the front of the house and off the front porch. She has to use walls along with her cane to ambulate and she believes that if she were medicated that she may not be able to get out.
- 7) The claimant advised the nurse during the assessment that she could get in and out of bed and on and off the couch by herself. She reported to the nurse on the day of the assessment that she was having a bad day, and the nurse observed her get up from a low couch to standing with no physical assistance. The claimant made mention at the assessment and testified at the hearing about her knees getting stiff when she is cold. She reports that she needs someone to help her straighten her legs so that she can transfer.
- 8) During the assessment, the claimant related to the evaluating nurse that she does her own bathing and that she washes herself from head to toe. She uses a hand sprayer and uses a shower seat and railing. She told the nurse that she lets someone know that she is in the shower and she usually waits until the homemaker is there. Upon review, the nurse was told that on bad days the homemaker helps her get in the shower, but that she did not need help getting out. At the hearing, the claimant and homemaker testified that the claimant only washes part of her body and that the homemaker finishes up. The claimant testified that she can pull herself up with the railing, but that she needs help getting out.
- 9) The claimant testified that she can administer her own medication, but that sometimes she needs help getting bottles open. She reports that she does know which medication to take but will sometimes have others bring them to her.
- 10) The homemaker RN, who was present for the assessment, testified that she agreed with the assessment completed by the WVMI nurse.

11) 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.

12) 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.

13) 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.

14) 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--
bowel | Level 3 or higher; must be incontinent |
| 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.

- 15) 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 incontinence.

- 2) Evidence and testimony provided for this hearing did support that one additional deficit should have been assessed. This deficit is in the area of vacating in the event of an emergency. Policy provides that if the individual can not independently vacate in an emergency then a deficit is assessed. The nurse's notes regarding difficulty in ambulating along with the testimony regarding the number of steps required for vacating support the need for hands on assistance to vacate in the event of an emergency. One additional deficit would still leave the total deficits under the five (5) required for medical eligibility.

- 3) The Department was correct in not assessing a deficit for decubitus and medicating. A decubitus is an ulcerated pressure sore. Calluses on the bottom of the feet do not fit this description. The claimant clearly can administer her own medication with some help with opening containers.
- 4) Policy §503.2 #26 provides that if the individual needs physical assistance from others for transfer and ambulate then a deficit is assessed. The claimant is able to transfer and ambulate unassisted. She advised the nurse of this ability as well as demonstrated the acts. Needing help with freeing up stiff joints in order to transfer does not support that she needs help with the actual act of the transfer. While she is unsteady and has balance problems, she clearly can walk without hands on assistance. She only requires some close supervision while walking.
- 5) The information regarding bathing that the claimant gave to the evaluating nurse during the assessment and the testimony she gave at the hearing directly contradicts each other. At the assessment, she told the nurse that she could wash herself from head to toe. At the hearing, she testified that she could only wash parts of her body and that her homemaker has to finish. At the assessment, she told the nurse that she only needs to tell someone that she is in the shower and that she does not need help getting out. At the hearing, she testified that she needs help getting out of the shower. Due to the obvious conflicting information, this Hearing Officer finds the witness to lack credibility. It is reasonable to believe that the information provided at the evaluation more closely represents the truth. This claimant does not require hands on assistance for bathing. No deficit should have been assessed for bathing.

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 6th Day of March 2008.

**Sharon K. Yoho
State Hearing Officer**