



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

April 7, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 20, 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 continue to meet 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 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
WVMI
CWVAS
Mary McQuain, Esq., Office of Attorney General
[REDACTED] Esq., Legal Aid of West Virginia

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

_____,

Claimant,

v.

Action Number: 08-BOR-460

**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 7, 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 March 20, 2008 on a timely appeal filed December 13, 2007. The hearing was originally scheduled for February 27, 2008, but was rescheduled at the request of the Claimant.

It should be noted that the Claimant's benefits have been continued pending the hearing decision.

In addition, it should be noted that this decision will consider medical eligibility only. Items related strictly to Level of Care will not be considered in this appeal.

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
_____, wife of Claimant
_____, son of Claimant
_____, RN, CARE
_____, Homemaker, CARE
_____, Esq., Legal Aid of West Virginia

Telephonic participants

Debbie Lemasters, RN, West Virginia Medical Institute
Angel Khosa, Licensed Social Worker, Bureau of Senior Services
Mary McQuain, Esq., Office of Attorney General

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 Waiver Program Informed Consent and Release of Information
- D-2 Aged/Disabled Home and Community-Based Services Manual Section 503
- D-3 Pre-Admission Screening form dated November 9, 2007
- D-4 Medical Necessity Evaluation Request
- D-5 Notice of Potential Denial dated November 15, 2007
- D-6 Hearing/Grievance Record information
- D-8 Hearing Request

Claimant's Exhibits:

- C-1 Letter from Dr. [REDACTED]
- C-2 Health Profile
- C-3 Phone Message/Prescription/Refill Request

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual re-evaluation to verify his continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment (D-3) on November 9, 2007 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified four (4) qualifying deficits for the Claimant in the areas of physical assistance with bathing, dressing and grooming, and bladder incontinence.
- 3) The Claimant was sent a Notice of Potential Denial (D-5) on November 15, 2007 and was advised that he had two weeks to submit additional medical information for consideration. A final denial letter was sent on December 4, 2007.
- 4) During the hearing, the Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Physical assistance with eating- The CARE Nurse testified that the Claimant has hand tremors (reportedly resulting from Parkinson's Disease) and cannot cut up his food. The Claimant's homemaker also testified that the Claimant requires assistance with eating. She stated the Claimant has no teeth, therefore his food is cooked to be tender and is then cut into small bites. He also has difficulty getting the food to his mouth when he experiences tremors. The Claimant's wife also provided testimony concerning the Claimant's limitations in this area.

PAS comments indicate the Claimant can feed himself, but that he told the WVMI Nurse he cannot cut up his own food due to tremors. In addition, his meat must be cut up because he has no teeth. The nurse concluded, however, that the Claimant is capable of cutting up his own food because he was able to control a pen to sign his name and is able to shave his beard with a razor. The nurse reported seeing no tremors when the Claimant was at rest and stated that the tremors she observed were not severe.

Because the Claimant experiences tremors and has no teeth, it is reasonable to determine that he requires assistance in cutting up his food as was reported during the PAS assessment. While the WVMI Nurse noted that the Claimant is able to sign his name, the legibility of the signature must be considered. Therefore, one (1) additional deficit is awarded to the Claimant in the area of physical assistance with eating.

Inability to vacate in the event of an emergency- The homemaker testified that the Claimant, who suffers from Chronic Obstructive Pulmonary Disorder and emphysema, becomes disoriented due to his breathing problems and that he could not vacate his residence unassisted in the event of an emergency. The Claimant's wife also testified that

the Claimant would be unable to walk out of his residence unassisted in the event of an emergency and that she would have to physically guide him. The Claimant's witnesses also testified that he holds onto furniture for assistance with ambulation and uses a walker.

A December 18, 2007 letter from Dr. [REDACTED] (C-1) states that "He (the Claimant) has difficulty with ambulation with the shortness of breath on mild to moderate exertion and would be unable to vacate the building, for example, in case of a fire."

The WVM Nurse testified that the Claimant was rated on the PAS as requiring supervision to vacate the residence in the event of an emergency. She testified that the Claimant's wife had reported the Claimant drives to church on Sunday and can go outside of the house onto the porch. PAS comments also state:

Spouse stated if he gets nervous he starts shaking and he would need physical assistance [sic] to vacate and client stated he would need assistance to vacate for her [sic] would get "lost" in the smoke. Client ambulated in the home independently, he stated he can go out of home onto porch himself and he still is able to drive the car, due to being anxious per spouse and getting lost in the smoke per client he would require supervision to vacate in an emergency.

While it was noted that the Claimant can drive to church and walk out onto his porch under normal circumstances, it is reasonable to believe that his breathing problems and the potential for disorientation would render him unable to vacate his home without hands-on assistance in the event of a fire or other emergency situation. Therefore, one (1) additional deficit is awarded for inability to vacate in the event of an emergency.

Inability to administer medication- The Claimant's wife testified that she places the Claimant's pills into a medicine cup. She testified that at times he cannot get the pills to his mouth due to tremors and that his needs require more than a reminder. The Claimant's homemaker testified that the Claimant's wife and son prepare his medications and that the Claimant has taken medication incorrectly when he attempts to administer it unassisted.

The letter from Dr. [REDACTED] (C-1) states that "He (the Claimant) lives at home with his wife, but is unable to administer his own medications because of tremulousness. He is also unaware of the dosages of his medications and would need his wife's help in order to properly take his medications at a timely interval at the appropriate dose."

The WVM Nurse had rated the Claimant as requiring prompting/supervision in regard to medication administration. PAS notes state:

Spouse stated she fills his med planner for him and due to "tremors" he could not fill them himself. He can take pills out of the med planner and place medications in a cup and than [sic] place them in his mouth himself. Spouse stated she will place the pills in a cup for him at other times and he picks the cup up and places them in his mouth himself.

Testimony presented during the hearing indicates that the Claimant's only contribution to medication administration is taking pills from a cup and putting them in his mouth. Information also reveals that the pills are sorted for him by others and that he has taken medication incorrectly when unassisted. It is clear- both from testimony and the physician's letter- that the Claimant is dependent on others to ensure that he is properly medicated. One (1) additional deficit is awarded for inability to administer medication.

Walking- The physician's letter (C-1) indicates that the Claimant has difficulty with ambulation due to shortness of breath, and testimony reveals that the Claimant holds onto walls/furniture to ambulate and uses a walker.

The Claimant was rated as walking independently (Level 1) on the PAS. The WVM Nurse recorded that the Claimant has a walker and uses a cane/furniture for support when his back hurts. However, he ambulated independently on the date of the assessment and no loss of balance was noted.

No information was provided to indicate that the Claimant should be rated as Level 3 (one-person assistance) in walking, so no deficit can be awarded in this area in regard to medical eligibility.

- 5) Aged/Disabled Home and Community-Based Services Manual Section 503 (D-2)- 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 (D-2) – 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-2): 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 was awarded four (4) deficits by the Department in conjunction with his November 2007 Aged/Disabled Waiver Program medical reevaluation.
- 3) As a result of information provided during the hearing, three (3) additional deficits are awarded to the Claimant in the areas of physical assistance with eating, inability to vacate in the event of an emergency, and inability to administer medication.
- 4) The required 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 terminate the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. In conjunction with the medical eligibility findings, three (3) points must be added to the Claimant's overall PAS Level of Care rating.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of April, 2008.

**Pamela L. Hinzman
State Hearing Officer**