



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St
Charleston, WV 25313
304-746-2360 Ext 2227

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 2, 2008

Dear Ms _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 8, 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,

Jennifer Butcher
State Hearing Officer
Member, State Board of Review

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

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

_____,
Claimant,

v. **Action Number: 08-BOR-556**

**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 8, 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 8, 2008 on a timely appeal filed January 23, 2008.

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

_____, Daughter of Claimant

_____ RN Homemaker for Coordinating Council for Independent Living here after known as (CCIL)

_____ Homemaker for CCIL

Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)

Stacy Holstine, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Jennifer Butcher, 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 21, 2007
- D-3 Notice of Potential Denial dated December 6, 2007
- D-4 Notice of Denial dated December 21, 2007
- D-5 Request for Hearing dated January 2, 2008

Claimant's Exhibits:

- C-1 Statement from Medical Doctor regarding her condition dated 1/7/08

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 21, 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 dressing, physical assistance with grooming, and incontinence of bowels.

- 3) The Claimant was sent a Notice of Potential Denial on December 21, 2007 (D-3) and was advised that he had two weeks to submit additional medical information for consideration by WVMi. Additional information was submitted, however, the PAS findings remained unchanged.
- 4) WVMi sent the Claimant a Notice of Denial (D-4) on December 21, 2007.
- 5) The Claimant's representatives contended that additional deficits should be awarded in the following areas:

Physical assistance with eating – Homemaker RN for the Claimant testified that the Claimant requires physical assistance with eating. The homemaker cuts up the claimant's food and opens containers of food for the claimant because she can not grip the seal on some of the food containers to open them. According to the Doctor's statement (C-1 Exhibit) states patient suffers from arthritis, according to homemaker RN can not grip tight enough to open containers.

The WVMi Registered Nurse testified that the Claimant demonstrated she could open her medicine bottle which had a closed safety cap. She stated that the Claimant reported to her at the assessment she cooks sometimes, heat up a can of soup, make a sandwich fix a bowl of cereal , can peel an apple and she cuts up her own food and feeds herself. The day the WVMi nurse visited claimant's home she was making herself a cup of coffee and drinking from a mug and not problems were indicated.

While it may be clear now that the Claimant requires additional help with food preparation, it was undisputed that she had the functional ability to prepare some of her meals and open her medicine bottles on the date of the PAS assessment. Therefore, no additional deficit can be awarded in this area.

Physical assistance with Vacating a building – Homemaker RN stated the claimant has Osteoporosis and Arthritis in the legs and feet. The claimant also had poor balance and lives on the fourth floor. Homemaker RN testified the claimant could not go down the steps in case there was a fire because of her arthritis, poor balance, and get short of breath when she walks too far. (Exhibit C-1) according to the doctor's statement "She also has poor balance and lives in a 4th floor apartment. She requires assistance when vacating the building."

The WVMi Nurse testified that the Claimant could vacate in an emergency. Claimant can go down the steps by holding on to the rail and that she would need supervision due being bent over and having to steady herself at times, and she also on the 4th floor apartment.

In regard to vacating, the WVMi Nurse testified that there are four elements you have to choose from in determining the level of assistance for vacating:

1. Independence
2. Supervision- would not require hands on assistance
3. Physically unable – would require hands on assistance
4. Mentally unable – also would require hands on assistance

The nurse stated she could only observed how the claimant was ambulating the day she was there for the PAS assessment. On that day she was moving about the apartment with a touch of the furniture sometimes to steady herself. She also asked the homemaker and claimant if this was a normal day and they both answered yes, so no deficit can be awarded for one-person assistance with transfers.

Bathing – The Homemaker RN states claimant has a lump under her left arm and can not lift that arm to bathe herself. The homemaker also states the claimant does need help getting in and out of the shower/bathtub combination because she is unsteady.

This is in contrast to the statement the claimant gave the WVMI nurse when asked about her bathing. The Claimant has a shower chair but states she has not used it in a couple of weeks. She has grab bars which she states she uses to get in and out of the shower. She denies needing any assistance getting in/out of the shower or any assistance with any portion of her bath. She reports she has a brush she uses to wash her back, and homemaker agreed.

While claimant may need some assistance now with her bathing it was not evident at the time of the PAS assessment.

- 6) According to testimony from the WVMI nurse a Potential Denial Letter dated December 6, 2007 was sent to Claimant's provider agency (Exhibit D-3) requesting "if you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WVMI *within the next 2 week*". Any additional information submitted within this timeframe will be considered before a final determination is made." The additional information was submitted as of January 7, 2008 as per (Exhibit C-1) Medical statement from Doctor [REDACTED]

- 7) 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.

- 8) 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.
- 9) 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 July 2007 in conjunction with his Aged/Disabled Waiver Program medical reevaluation.

- 3) As a result of information presented during the hearing the claimant has not met the required five (5) deficits have not been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.
- 4) If the claimant believes her condition has decreased since the PAS was completed in November 2007 she can reapply for a new PAS to be completed at any time.

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 2nd Day of May, 2008.

**Jennifer Butcher
State Hearing Officer**