



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 21, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 19, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through 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]

The information submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged & Disabled Home & Community Based Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services through the Medicaid Aged & Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

_____,

Claimant,

v.

Action Number: 08-BOR-698

**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 August 21, 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 originally scheduled to convene on April 9, 2008 but was continued by an ORDER of the Board of Review as the evaluating nurse was no longer employed by WVMH and unavailable to testify at the hearing. This appeal was rescheduled to convene on August 19, 2008 as directed in the Order and based on the Claimant's January 16, 2008 timely 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
_____, Claimant's sister
Kay Ikerd, RN, BoSS
Melody Lehosit, RN, WVMI

Presiding at the hearing was Thomas E. Arnett, 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 was correct in its decision to propose termination of the Claimant's benefits and services provided through the Medicaid Aged & Disabled Home and Community-Based Waiver Services 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 May 20, 2008
- D-3 Notice of Potential Denial dated May 22, 2008
- D-4 Notice of Termination/Denial dated June 11, 2008

VII. FINDINGS OF FACT:

- 1) As indicated in Section I (Introduction) of this decision, the Claimant's original appeal was filed on January 23, 2008 following an adverse notice dated January 16, 2008 advising the Claimant that her benefits and services through the Medicaid Aged & Disabled Waiver Services Program would be terminated due to a finding of medical ineligibility. Because the WVMI RN who completed the original medical assessment was no longer employed by WVMI and not available to participate in the Claimant's appeal, upon request of the Claimant, the Department was Ordered to have a new medical assessment completed.

- 2) On May 20, 2008, the Claimant was reevaluated (medically assessed) to determine continued eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on 5/20/08}.
- 3) On or about May 22, 2008, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2.

Based on your PAS you have deficiencies in only 2 areas – Vacate a Building and Bathing.

This notice goes on to advise the Claimant – “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 weeks*. Any additional information submitted within this timeframe will be considered before a final determination is made.”

- 4) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated June 11, 2008 (Exhibit D-4). This notice states, in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 2 areas – Vacate a Building and Bathing.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 5) The Claimant and her representative contend that she should have been awarded a deficit in dressing.

-The Claimant and her witness testified that the Claimant does, on occasion, require physical assistance with dressing. While the WVMI RN indicated that the deficit was not awarded based on her functional assessment and observed abilities, testimony received at the hearing (difficulty putting on pants, bra and fastening small buttons) is consistent with the information reported on the date of the assessment. Based on the evidence, the Claimant is awarded a deficit in dressing.

- 6) The Department noted that the assessment only addresses the Claimant's functional ability in the home. Although the Claimant's witness testified that Claimant has some ambulation problems, she did not qualify for a deficit in transferring or walking but was awarded a deficit in vacating due to the problematic layout of the exit from her residence.

- 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 – 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 can vacate the building:
a) Independently, b) with supervision, c) mentally unable or d) physically unable to vacate a building. Vacating Independently or with Supervision are not considered a deficit.

- #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 requires that an individual must have five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded two (2) deficits on a PAS assessment completed by WVMi on May 20, 2008 – Vacating a building and Bathing.
- 3) The evidence submitted at the hearing supports the finding of a third (3rd) deficit in the area of dressing.
- 4) Whereas the Claimant demonstrates only three (3) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency’s proposal to terminate the Claimant’s benefits and services through the Medicaid, 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 21st Day of August, 2008.

**Thomas E. Arnett
State Hearing Officer**