



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

June 10, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 30, 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 Services Waiver 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

Pc: Erika H. Young, Chairman, Board of Review
BoSS
CCWV

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

_____,
Claimant,

v.

Action Number: 08-BOR-699

**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 June 10, 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 May 30, 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:

[REDACTED], Claimant
[REDACTED] RN, CCWV
[REDACTED] CM, CCWV
[REDACTED] Homemaker, CCWV
[REDACTED] Pastoral Counselor
[REDACTED] Homemaker, CCWV
Kay Ikerd, RN, BoSS
Debra LeMasters, 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 to be decided is whether the Agency was correct in its decision to propose termination of the Claimant's benefits and services 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 December 14, 2007
- D-2a FAX dated 12/14/07 from Dr. [REDACTED] (received by WVMI on 1/9/08)
- D-3 Notice of Potential Denial dated December 17, 2007
- D-4 Notice of Termination/Denial dated January 15, 2008

VII. FINDINGS OF FACT:

- 1) On December 14, 2007, the Claimant was evaluated (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 12/14/07}.

- 2) On or about December 17, 2007, 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 3 areas – Vacate a Building, Bathing & Grooming.

This notice goes on to advise the Claimant that she can provide additional information regarding her medical condition within 2-weeks for consideration before a final decision is made. However, if no additional information is received within 2 weeks from the date of the notice, she will be sent a denial notice.

- 3) Additional information was received by WVMi on or about January 9, 2008 (Exhibit D-2a), however, WVMi's eligibility determination remained unchanged and the Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated January 15, 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 3 areas – Vacate a Building, Bathing & Grooming.

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

- 4) The Claimant and her representatives contend that the Claimant remains medically eligible to participate in the ADW Program as she should have been awarded a deficit in incontinence (bowel and bladder), Medication Administration and Dressing.

- Medication administration is reported to be a problem as the Claimant cannot read what is on the bottle due to poor vision and several of the bottles are the same size. She also has difficulty getting her medication refilled from the pharmacy. While these concerns are legitimate; the Claimant requires assistance in set-up, someone to remind her to take medications and help contacting the pharmacy when medications need refilled, however, the Claimant can administer her own medications with prompting and supervision. Based on the evidence, the Claimant was correctly assessed as requiring prompting and supervision and a deficit cannot be awarded in medication administration.

- Individuals testifying on behalf of the Claimant purported that the Claimant was concerned that she would be forced to go to a nursing home, and for this reason, the Claimant denied incontinence. In addition, the Claimant is reported to be very private and embarrassed about incontinence issues. The WVMI RN's notes from the day of the assessment (see page 7 & 8 on Exhibit D-2) indicate that the Claimant has bowel incontinence (also confirmed on page 3, "Other Medical Conditions"), however, the number of bowel incontinence incidents reported on the day of the assessment were approximately 2 per week (occasional). When the WVMI RN was assessing bladder incontinence, she noted inconsistencies in the information she was receiving, however, the homemaker reported that the Claimant had at least three (3) episodes of incontinence per week which resulted in her needing to change her bed linens two times per week. In addition, the Claimant's doctor's office reported she was incontinent of bladder when contacted by the WVMI RN and this is again confirmed in the supplemental information provided by Dr. [REDACTED] in Exhibit D-2a and testimony received at the hearing. **Based on the evidence, the Claimant is awarded a deficit in bladder incontinence (level-3).**

- Testimony received at the hearing regarding why the Claimant would require physical assistance in dressing was not specific. There was no testimony to indicate that the Claimant would require assistance with socks, shoes, pulling up pants, button, zippers etc... The WVMI RN noted on page 7 of Exhibit D-2 that the homemaker reported on the day of the assessment that it takes the Claimant approximately ½ hour to dress herself but that "she can and does." On the day of the assessment, the Claimant was wearing a button down blouse, slacks, socks and tie shoes and the Client and homemaker reported that the Claimant dressed herself that day. Although it is reasonable that an individual who requires physical assistance with bathing and grooming would demonstrate some degree of difficulty dressing independently, in the absence of consistent and convincing evidence to the contrary, a deficit in dressing cannot be awarded.

5) 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.

6) 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.

7) 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 states 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 three (3) deficits on a PAS assessment completed by WVMi in December 2007 – Vacating, Bating and Grooming.
- 3) The evidence submitted at the hearing identifies one (1) additional deficit – Incontinence.
- 4) Whereas the Claimant demonstrates four (4) 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 10th Day of June, 2008.

**Thomas E. Arnett
State Hearing Officer**