



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

July 17, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 23, 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,

Jennifer Butcher
State Hearing Officer
Member, State Board of Review

Cc: BoSS
CWVAS

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

_____,
Claimant,

v.

Action Number: 08-BOR-747

**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 July 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 convened on May 323 2008 on a timely appeal filed January 21, 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:

██████████ CWVAS Program Supervisor
██████████ Case Manager
Kay Ikerd, RN, BoSS
Selena Hall, RN, WVMH

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 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 November 16, 2007
- D-3 Notice of Potential Denial dated December 4, 2007
- D-4 Additional information from Dr ██████████ MD regarding Ms _____ medical condition.
- D-5 Notice of Termination/Denial dated January 9, 2008

VII. FINDINGS OF FACT:

- 1) On November 16, 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 12/16/07}.
- 2) On December 4, 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 2 areas – Bathing and Continence.

This notice advises 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 West Virginia medical Institute (hereinafter WVMI) on December 10, 2008 (Exhibit D-4), determined that two additional deficits could be awarded for Grooming and Dressing. Even though deficits were given the total amount of five was not met. Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated January 9, 2008 (Exhibit D-5). 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 4 areas – Bathing, Grooming, Dressing and Continence.

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

- 4) The Claimant's representatives contested that the Claimant remains medically eligible to participate in the ADW Program as she should have been awarded a deficit vacating a building.

- Vacating the Building

██████████ Central West Virginia Aging Services Program Supervisor testified to the facts that Ms _____ lives by herself and that the homemaker is with her four hours a day, five days a week and her daughter comes a couple of times a week and she takes Ms _____ to her doctor appointments, the remainder of the time Ms _____ is on her own. Ms ██████████ strongly advocates Ms _____ is not physically or mentally capable of vacating the building due to her Dyspnea, Arthritis, Osteoporosis and occasional anxiety attacks. Claimant also has oxygen in the home due to her Dyspnea. The Claimant does not require continuance oxygen but Ms ██████████ believes this may also be a threat in case of fire and the Claimant's ability to vacate the building. According to the documentation from Dr. ██████████ MD (Exhibit D-4) Claimant could not vacate the building by herself in case of an emergency. She has an unsteady gait and gets confused. As per testimony from Ms ██████████ Dr ██████████ has been Claimant's physician for many years and would be able to give an accurate assessment of Ms _____ condition. Ms ██████████ WVMI Nurse

completed the assessment for Ms _____ and she stated on the day of the assessment (Exhibit D-2) #25 In the event of emergency, the individual can vacate the building: With Supervision .The narrative states she would need some verbal assistance, member states I don't know." Based on the testimony and evidence of Ms Campbell and the physician the Claimant would need some assistance in guidance but is able to vacate on her own. Therefore the Claimant was correctly assessed as requiring prompting and supervision and a deficit cannot be awarded. A deficit can only be awarded if one is mentally or physically unable to evacuate the building in the event of an emergency with physical assistance of another person.

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 is 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 two (2) deficits on a PAS assessment completed by WVMi in November 2007 – Bating and Continence
- 3) After additional medical documentation was reviews two (2) additional deficits were awarded for Grooming and Dressing.
- 3) 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, and (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this Day of , 2008.

Jennifer Butcher
State Hearing Officer