



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 19, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 4, 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

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

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

_____,
Claimant,

v.

Action Number: 08-BOR-858

**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 19, 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 June 4, 2008 on a timely appeal filed February 14, 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
_____, niece/POA

[REDACTED] CM, CWVAS
[REDACTED] RN, CWVAS
Kay Ikerd, RN, BoSS (Participated telephonically)
Penny Jordan, RN, WVMI (Participated telephonically)

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 proposal to terminate 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 1/9/08
- D-3 Notice of Potential Denial dated 1/21/08
- D-4 Additional information from [REDACTED] dated 1/21/08
- D-5 Notice of Termination/Denial dated 2/11/08

VII. FINDINGS OF FACT:

- 1) On January 9, 2008, 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 1/9/08}.
- 2) On or about January 21, 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 4 areas – Eating, Bathing, Grooming and Dressing.

This notice goes on to advise the Claimant that he can provide additional information regarding his 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, he will be sent a denial notice.

It should be noted that additional information was received timely and has been identified as Exhibit D-4.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated February 11, 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 – Eating, Bathing, Grooming and Dressing.

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

- 4) The Claimant and his representatives contend that the Claimant should have been awarded a deficit in bladder incontinence and medication administration.

Bladder incontinence – The Claimant experiences episodes of bladder incontinence, according to his niece, after he has worked a long day on their 34.5 acre farm. The Claimant’s niece testified that he will sometimes work so hard that he develops the shakes and he seems like he loses control of his muscles. She stated that he really works hard in the summer and mows grass all day – this is when he usually experiences episodes of incontinence. He typically only has urinary incontinence accidents once or twice during the winter months.

Exhibit D-2, page 6 of 7 reveals that when the Claimant was assessed on January 9, 2008, it was reported that “he has not had any bladder accidents since last summer when he was working outside.” He was reported to have them “about everyday when he ‘over did it’ working outside and lifting heavy equipment.”

The evidence indicates that bladder incontinence is situational and clearly no more than occasional, as assessed by the WVMi RN. Episodes of bladder incontinence are infrequent in the winter months and were reported to occur more often in the summer months (frequency unknown) only after a full day of physical labor. Based on the evidence, the Claimant has been correctly assessed at a level 2 (occasional incontinence).

Medication Administration – Representatives testifying on behalf of the Claimant indicated that he cannot read and therefore unable to administer his medications (also see Exhibit D-4). The WVMI RN testified that the Claimant was assessed as needing prompting and supervision as the Claimant can take his medications but he requires set-up and reminded when to take medications. Whereas there is no evidence to indicate that the Claimant requires more assistance than prompting and supervision, the Claimant has been assessed correctly. A deficit in medication administration cannot be awarded.

While vacating was mentioned at the hearing, the Claimant's niece/representative was referring to the ability of another household member to vacate. It was agreed on the record that the Claimant can vacate independently in the event of an emergency.

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 eligible individual must qualify for a Nursing Facility (NF) level of care. As a result, the 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 four (4) deficits on a PAS assessment completed by WVMC in January 2008 – Eating, Bathing, Grooming and Dressing.
- 3) The evidence submitted at the hearing fails to confirm any additional deficits. A review of the evidence fails to demonstrate that the Claimant requires a nursing home (NF) level of care.
- 4) Whereas the Claimant demonstrates only 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 19th Day of June, 2008.

**Thomas E. Arnett
State Hearing Officer**