



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 30, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 28, 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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
Select In-Home Services

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

_____”
Claimant,

v. Action Number: 08-BOR-864

**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 May 30, 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 28, 2008 on a timely appeal filed February 15, 2008.

It should be noted that the Claimant’s benefits have been continued pending a hearing decision.

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 son and Homemaker, Select In-Home Services
_____, Claimant's former spouse

Telephonic participants:

Kay Ikerd, RN, Bureau of Senior Services
Debra Lemasters, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, 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 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) completed on January 7, 2008
- D-3 Notice of Potential Denial dated January 9, 2008
- D-4 Additional information
- D-5 Denial notice dated February 5, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical reevaluation to determine if he meets medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on January 7, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified three (3)

qualifying deficits for the Claimant in the areas of physical assistance with bathing, dressing and grooming.

- 3) The Claimant was sent a Notice of Potential Denial on January 9, 2008 (D-3) and was advised that he had two weeks to submit additional medical information for consideration. Additional information (D-4) was submitted, however the documentation failed to change the PAS findings. The additional information, provided by Dr. [REDACTED] indicates that the Claimant has “problems with seizures and vacating a building, transfer, walking and feeding himself,” however no specific information on these areas of functionality was provided.
- 4) The Claimant was sent a denial notice on February 5, 2008 (D-5).
- 5) During the hearing, the Claimant and his witnesses contended that additional deficits should be awarded in the following areas:

One-person assistance with transferring- The Claimant’s son/homemaker testified that he physically assists his father with transfers out of bed when he has a “bad day” due to back pain.

The WVMi Nurse testified that the Claimant had indicated he transfers using furniture for support on the date of the assessment. The Claimant transferred off the couch using furniture armrests on the date of the PAS, but stated that his back hurts when he transfers.

Due to the Claimant’s reported back pain during transfers, it is reasonable to determine that he requires physical assistance to rise from his bed at times.

One-person assistance with walking- The Claimant’s son/homemaker testified that the Claimant has difficulty walking long distances to the back yard or car and requires physical assistance at times. The son later indicated that he sometimes physically assists his father with walking inside the house, but his father is on the couch most of the time.

The WVMi Nurse testified that the Claimant denied using any assistive device to walk on the date of the assessment and ambulated from the living room to the kitchen independently at that time. The nurse indicated that the Claimant’s gait was steady and no loss of balance was noted. She testified that the Claimant had indicated he was having a “bad day” on the PAS date, but was still able to walk independently. The Claimant testified that he did not recall telling the nurse he was having a “bad day.”

Evidence is insufficient to justify the awarding of a deficit for one-person assistance with walking. The Claimant denied using even an assistive device to aid in ambulation and walked independently with a steady gait on the date of the assessment despite the nurse’s contention that he reported he was having a “bad day.” While the Claimant may require assistance with walking longer distances/outside of the home, it is reasonable to believe that the Claimant is capable of navigating through the familiar environment of his residence.

The Claimant and his witnesses did not contest the area of eating (for which he received a PAS rating of Level 1, self/prompting) or the area of inability to vacate the building in the event of an emergency (for which he was rated as Level 2, able to vacate with supervision).

- 6) 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.

- 7) 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.

- 8) 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. The Claimant was awarded three (3) deficits on his January 2008 Aged/Disabled Waiver Program medical evaluation.
- 2) As a result of information provided during the hearing, one (1) additional deficit is awarded to the Claimant in the area of physical assistance with transfers. This brings the Claimant's total number of deficits to four (4).
- 3) The required deficits have not been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

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 based on medical ineligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of May, 2008.

**Pamela L. Hinzman
State Hearing Officer**