



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 23, 2008

Dear Mr. _____-:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 22, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny 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 meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny 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
WVMI
CWVAS

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

Claimant,

v.

Action Number: 08-BOR-930

**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 23, 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 22, 2008 on a timely appeal filed February 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:

_____ Claimant
_____, friend of Claimant
[REDACTED] Case Manager, Central West Virginia Aging Services

Telephonic participants

Kay Ikerd, RN, Bureau of Senior Services
Barbara Plum, 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 action to deny 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 January 9, 2008
- D-3 Notice of Potential Denial dated January 21, 2008
- D-4 Denial notice dated February 5, 2008

Claimant's Exhibits

- C-1 Information from Dr. [REDACTED]

VII. FINDINGS OF FACT:

- 1) The Claimant applied for benefits under the Aged/Disabled Waiver Program and underwent a Pre-Admission Screening (PAS) evaluation to determine if meets medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a medical assessment on January 9, 2008 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified four (4) deficits for the Claimant in the areas of

physical assistance with bathing, dressing and grooming, and inability to vacate the building in the event of an emergency.

- 3) The Claimant was sent a Notice of Potential Denial on January 21, 2008 (D-3) and was advised that he had two weeks to submit additional medical information for consideration. No additional information was submitted.
- 4) The Claimant was sent a denial notice on February 5, 2008 (D-4).
- 5) During the hearing, the Claimant and his witnesses contended that additional deficits should be awarded in the following areas:

Physical assistance with eating- The Claimant reported during the assessment that he cannot always cut up his food, particularly in the winter months, as he has carpal tunnel syndrome. He stated that he prepares his food and can otherwise feed himself. The Claimant's friend testified that she assists the Claimant frequently with cutting and peeling foods. In addition, a statement (C-1) from Dr. [REDACTED] confirms that the Claimant requires assistance in this area.

The WVM Nurse responded that, while the Claimant reported needing assistance to cut his foods at times, he had indicated that the last time he required help was a week prior to the assessment. Because he does not require daily assistance, no deficit was awarded.

As a result of information presented during the hearing, one (1) additional deficit is awarded for physical assistance with eating as the Claimant reported needing assistance in this area during the assessment and testimony/medical documentation supports this contention. Policy does not specify that the Claimant must require daily assistance in order to receive a deficit in this area.

Inability to administer medications- The Claimant's Case Manager and friend testified that the Claimant needs assistance with opening his medication bottles. No information was presented, however, to indicate that the Claimant is unable to take the medication once it is removed from the bottle.

Because the Claimant's only deficiency in this area is an inability to open bottles, he requires only prompting/supervision with medication administration and no deficit can be awarded.

- 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.
- 2) The Claimant was awarded four (4) deficits by the Department in conjunction with a January 2008 Aged/Disabled Waiver Program medical evaluation.
- 3) 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 eating. This brings the Claimant's total number of deficits to five (5).
- 4) The required deficits have 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 **reverse** the Agency's action to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The one (1) additional deficit awarded by the Hearing Officer should be considered when determining the Claimant's Level of Care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd Day of May, 2008.

**Pamela L. Hinzman
State Hearing Officer**