



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 9, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 8, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to deny your application for the Aged/Disabled Waiver program.

In arriving at a decision, the State Hearings 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 Home and Community Based Waiver Services Manual § 503).

The information which was submitted at your hearing revealed that you do not meet the medical criteria to be eligible for the Aged/Disabled Waiver program.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to deny your application for the Aged/Disabled Waiver program.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services

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

_____ ,

Claimant,

v. **Action Number: 08-BOR-965**

**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 8, 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 July 8, 2008 on a timely appeal, filed March 11, 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
_____, Claimant's daughter-in-law

Kay Ikerd, Bureau of Senior Services
Selena Hall, West Virginia Medical Institute

All participants testified by phone.

Presiding at the Hearing was Kristi Logan, 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 Department's decision to deny Claimant's application for the Aged/Disabled Waiver program was correct.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual § 503 and 503.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual § 503, 503.1, 503.1.1 and 503.2
- D-2 Pre-Admission Screening Form dated January 22, 2008
- D-3 Denial Notification Letter dated February 12, 2008
- D-4 Hearing Request received March 11, 2008

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

1) Claimant applied for services under the Aged/Disabled Waiver program. A Pre-Admission Screening (PAS) form was completed on January 22, 2008 by Selena Hall, RN with the West Virginia Medical Institute (WVMI) (D-2).

2) A denial notification letter was issued on March 11, 2008 which read in part (D-3):

Your request for benefits under the Home and Community Based Aged/Disabled Waiver program has been denied/terminated. An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program.

Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS indicated deficiencies in 4 areas.

3) Claimant was awarded deficits in the following areas: vacating in an emergency, bathing, dressing and grooming. An additional deficit was required for Claimant to qualify for the Aged/Disabled Waiver program.

- 4) Claimant testified that she needed help getting around her house. She is able to move around the house with the use of a cane. She stated no one assisted her when moving around because there is no one there to do so. She does use a wheelchair outside of the home. She mostly sits around. Her daughter-in-law, _____, helps her with her housework and cooking as she is unable to do those things herself. She also needs help getting into the bathtub or shower. She has vision problems but it is corrected with glasses.

Claimant stated she could feed herself, was oriented and had no hearing or communication problems. She denied any incontinence. She was able to administer her own medications.

- 5) _____ testified to her mother-in-law's difficulty walking around. She borrows a wheelchair when taking her out as Claimant cannot walk for long distances. She does assist her with her household chores.

- 6) Aged/Disabled Home and Community-Based Services Manual § 503 states:

Member Eligibility and Enrollment Process

Applicants for the Aged/Disabled Waiver Program (ADW) must meet the following criteria to be eligible for the program:

Be approved as medically eligible for Nursing Facility (NF) Level of Care

- 7) Aged/Disabled Home and Community-Based Services Manual § 503.2 states:

Medical Criteria

An individual must have five (5) deficits on the 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

- (a) Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)
- (b) Bathing - Level 2 or higher (physical assistance or more)
- (c) Dressing - Level 2 or higher (physical assistance or more)
- (d) Grooming - Level 2 or higher (physical assistance or more)
- (e) Bowel Continence - Level 3 or higher; must be incontinent
- (f) Bladder Continence – Level 3 or higher; must be incontinent
- (g) Orientation - Level 3 or higher (totally disoriented, comatose)
- (h) Transfer - Level 3 or higher (one-person or two-person assistance in the home)
- (i) Walking - Level 3 or higher (one-person assistance in the home)

(j) 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 four (4) deficits on her January 2008 medical evaluation.
- 2) Claimant testified that she needed help getting into the bathtub or shower. Claimant was already awarded a deficit in bathing on her PAS. No additional points can be awarded.
- 3) Claimant expressed trouble getting around the house. Claimant is able to walk with the assistance of the cane and without the assistance of another individual. Claimant was rated a Level 2, Supervised/Assistive Device for Walking. In order for Claimant to receive a deficit in this area, she would need to be a Level 3 or higher, meaning Claimant needed physical assistance to walk. Since Claimant can walk on her own with the means of a cane, no additional points can be awarded.
- 4) Claimant failed to meet the medical criteria required to be eligible for the Aged/Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny your application for services for the Aged/Disabled Waiver program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of July, 2008.

**Kristi Logan
State Hearing Officer**