



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

August 28, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 11, 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 does not meet the eligibility criteria of meeting five (5) of the 13 critical areas as mandated in the Medicaid Program Regulations 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

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

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

_____,

Claimant,

**v.
West Virginia Department of
Health and Human Resources,**

Action Number: 08-BOR-969

Respondent. In

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on August 28, 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 11, 2008 on a timely appeal filed February 28, 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
Kay Ikerd, RN, BoSS
Kathy Gue, RN, WVMI

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 13, 2007
- D-3 Notice of Potential Denial dated November 20, 2007
- D-4 Additional medical information from [REDACTED] D.O., F.A.A.F.P. dated December 10, 2007; received December 187, 2007.
- D-5 Notice of Denial dated January 21, 2008

Claimant's Exhibits:

- C-1 Support letter from [REDACTED] M.D. dated December 6, 2007; mailed December 12, 2007

VII. FINDINGS OF FACT:

- 1) On November 13, 2007 the Claimant was evaluated (medically assessed) to determine continued eligibility for participation in the Aged & Disabled Waiver Services Program, (hereinafter ADW Program) (Exhibit D-2), Pre-Admission Screening (PAS) completed on this date.

- 2) On or about November 20, 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 – 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.

- 3) Additional information was received by WVMi on or about December 18, 2007 (Exhibit D-4), however, WVMi's eligibility determination remained unchanged and the Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated January 21, 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 2 areas – Grooming and Dressing.

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

- 4) The Claimant contested that he should have been awarded a deficit in Vacating a Building, Eating, Incontinence for Bladder and Bowels, and Orientation.

-Vacating a Building: The Claimant testified to the fact that he has “pass out spells” and that he touches things to balance himself while walking in the home and he does not know if he would be able to vacate in an emergency. The Letter from Dr [REDACTED] dated December 10, 2007(Exhibit D-4) indicates the claimant suffers from a “noncardiogenic syncope, which definitely can limit him in his reason to evacuate a building, i.e. he can pass out very easily, which would render him helpless.” According to testimony from WVMi Nurse, Kathy Gue and the documentation from the PAS (Exhibit D-2) the claimant states that in the event of an emergency that he would be able to vacate the home. From the testimony and the weight of the documentation from Dr [REDACTED] a deficit should be awarded for vacating.

- **Eating:** The claimant was adamant in stating due to his depression he needed prompting to eat; sometimes he would not eat all day until someone would ask him if he had eaten. WVMI Nurse stated in her testimony the claimant may need prompting with his eating but he denies needing help with eating or cutting up his food. Ms. Ikerd Registered Nurse with Bureau of Senior Services; explained that in order to receive a deficit for eating a person must physically unable to feed themselves, therefore a deficit can not be awarded for eating.

- **Incontinence of Bladder and Bowels:** Claimant testified he had accidents every once in a while maybe three or four times a month; later in the testimony clarification needed made as to frequency per week his response was may be five to six times a week. Ms. Gue indicates on the PAS the claimant states he is incontinence of bladder and bowels one to two times a month and he does not wear protection. It is reasonable to believe the claimant has occasional incontinence but not enough to merit a deficit.

- **Orientation:** The Claimant testified that he is very orientated but when he has his “second type of pass outs” he does not know what day it is. According to the findings the day the PAS was completed the claimant did not know the day’s date, but he takes care of his bills. WVMI Nurse also reported the claimant stating “that due to his depression that he has days that he can’t function for a few days. He denies disorientation to person and place.” Ms Ikerd explained in order to be awarded this deficit a person must be continuously disorientated.

5) During the claimant’s testimony he admitted that he did not understand all the questions the WVMI nurse was asking and he did not understand that he needed to give true and accurate answers of his physical condition on the day of the assessment. He thought he needed to make a good impression so he did not give true and complete answers to the questions that were asked. Instead he only gave partial answers. The WVMI nurse explained at the beginning of her testimony the procedure she follows when arriving at the home to do the health assessment. She discussed the importance of providing accurate information.

6) The Claimant’s testimony supports the fact he has other issues than the physical deficits that can only be assessed for the Aged and Disabled Waiver Program, unfortunately these issues can not justify awarding deficits in the areas of eating, incontinence, and orientation.

7) 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.

8) 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.

9) 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 – Grooming and Dressing.

- 3) The evidence submitted at the hearing justifies that one additional deficit could be awarded for vacating a building. This additional deficit does not qualify the claimant medically for the Aged /Disabled Waiver Program therefore eligibility can not be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny the Claimant's application for 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 28th Day of August, 2008.

**Jennifer Butcher
State Hearing Officer**