



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 29, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 27, 2008. Your hearing request was based on the Department of Health and Human Resources' decision 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 decision 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

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

_____,
Claimant,

v. **Action Number: 08-BOR-970**

**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 29, 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 27, 2008 on a timely appeal filed February 29, 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 niece
_____, Claimant's great-niece

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 on January 16, 2008
- D-3 Notice of Potential Denial dated January 23, 2008 and additional medical information
- D-4 Denial notice dated February 12, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant was an applicant for benefits under the Aged/Disabled Waiver Program and underwent a medical evaluation to determine if she 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 16, 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 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 23, 2008 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. Additional information was submitted, however the documentation failed to change the PAS findings.
- 4) The Claimant was sent a denial notice on February 12, 2008 (D-4).
- 5) During the hearing, the Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Physical assistance with eating- The Claimant's witnesses testified that she chokes when eating and has "blacked out" after choking. They indicated that the Claimant's esophagus has previously been widened and cannot be medically widened in the future because it was torn. As a result, the Claimant must be supervised while eating and needs her food cut. The Claimant eats many soft foods, but has hamburger at times which is cut up for her. A letter from Dr. [REDACTED] (D-3) had been sent to WVMi in response to the Notice of Potential Denial. This letter states "she (the Claimant) requires that someone be with her any time she eats to help her cut food and to make sure that she doesn't pass out for any given time." The letter also states that the Claimant experiences tremors.

The WVMi Nurse testified that the Claimant reported she could cut up her own foods during the assessment and was not corrected by her niece, who was present for the PAS. The Claimant's niece responded that she had not wanted to correct her aunt at the time of the assessment, but would have done so had she realized the importance of accurate information.

Due to the Claimant's esophageal problems, it is reasonable to believe that meat is cut up for her to prevent choking. As a result of this information, one (1) additional deficit is awarded for physical assistance with eating.

Bladder incontinence- The Claimant's great-niece testified that the Claimant is incontinent of bladder at various times throughout the day. She testified that the Claimant was incontinent of bladder more than three times per week at the time of the assessment.

The WVMi nurse testified that the Claimant denied bladder incontinence at the time of the assessment.

Based on testimony presented during the hearing, one (1) additional deficit is awarded for bladder incontinence.

Medication administration- The Claimant's witnesses indicated the Claimant is able to take her medication, but forgets what she has taken and requires prompting/supervision. The Claimant can crush her own medication at times to place into apple sauce.

The WVMi Nurse indicated that medication preparation falls under prompting/supervision and a deficit can only be awarded if the Claimant is unable to place the pills in her mouth.

No deficit is awarded in this area because the Claimant is able to take her medication with prompting/supervision.

One-person assistance with walking- The Claimant's great-niece testified that the Claimant must have hands-on assistance if she is at a location where there is nothing to hold onto for stability. The letter from Dr. [REDACTED] indicates that the Claimant suffers from dizziness.

Notes on the PAS assessment indicate that the Claimant walked through the house unassisted during the nurse's visit, but that her gait was slow and unsteady at times. She had indicated that she holds onto things when walking in the home, but requires assistance to get to the car and uses a rail to get out of the home.

Based on information presented during the hearing, the Claimant mainly requires physical assistance when walking outside of her home environment, therefore no deficit can be awarded as the assessment considers functionality inside of the home.

One-person assistance with transferring- The Claimant's niece testified that she helps the Claimant transfer into bed about five times per week by lifting her legs. PAS comments indicate the Claimant's niece had reported during the assessment that she physically assists her aunt into bed at times. In addition to experiencing dizziness, the Claimant reportedly has arthritis in her knees.

The WVM Nurse testified that the Claimant was able to transfer using furniture at the time of the assessment.

Credible testimony was provided in regard to the Claimant's need for one-person assistance with transfers into bed in light of her arthritis and dizziness. Therefore, one (1) additional deficit is awarded for one-person assistance with transfers.

- 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 her January 2008 Aged/Disabled Waiver Program medical evaluation.
- 2) As a result of information provided during the hearing, three (3) additional deficits are awarded to the Claimant in the areas of physical assistance with eating, bladder incontinence and one-person assistance with transfers. This brings the Claimant's total number of deficits to six (6).
- 3) 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 three (3) additional deficits 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 29th Day of May, 2008.

**Pamela L. Hinzman
State Hearing Officer**