



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 28, 2008

Dear Ms. _____:

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' 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 meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** 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
WVMI
[REDACTED] County Senior Center

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

_____,
Claimant,

v. Action Number: 08-BOR-985

**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 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 May 22, 2008 on a timely appeal filed March 7, 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
_____, Case Manager, _____ County Senior Center
_____, Homemaker RN, _____ County Senior Center
_____, Homemaker, _____ County Senior Center

Telephonic participants

Kay Ikerd, RN, Bureau of Senior Services
Betsy Carpenter, 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 February 14, 2008
- D-3 Denial notice dated March 3, 2008
- D-4 Notice of Potential Denial dated February 15, 2008

Claimant's Exhibits

- C-1 Information from Dr. _____
- C-2 Information from Dr. _____
- C-3 Information from Dr. _____
- C-4 Information from Dr. _____

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 she continues to meet medical eligibility criteria for the program.

- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on February 14, 2008 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified four (4) qualifying 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 February 15, 2008 (D-4) and was advised that she had two weeks to submit additional medical information for consideration. No additional information was submitted.
- 4) The Claimant was sent a denial notice on March 3, 2008 (D-3).
- 5) During the hearing, the Claimant and her witnesses contended that additional deficits should be awarded in the following areas:

Physical assistance with eating- The Claimant has diabetic neuropathy and requires assistance at times with eating. Comments on the PAS indicate that the Claimant told the nurse she could peel an apple and denied needing assistance to eat, however the Claimant testified that she could not peel an apple “on her best day.” The Claimant’s homemaker agreed that the Claimant cannot use utensils at times.

The Claimant testified that she has no memory of the WVMI nurse visiting her to perform the assessment as she has difficulty recalling information. The Claimant was a patient at ██████████ Hospital at the time of the assessment and none of her representatives were present during the evaluation. The neuropathy diagnosis is confirmed on Exhibits C-1, C-3 and C-4.

PAS comments indicate that the Claimant was oriented and answered questions appropriately during the assessment. The WVMI nurse testified that she observed no problems with the Claimant’s range of motion that would hinder her ability to use eating utensils. She indicated that she observed the Claimant grasp a pen, sign her name, operate the television remote control and answer the telephone during the assessment. The nurse testified that the Claimant did not mention suffering from neuropathy and the nurse had received no diagnosis concerning neuropathy at the time of the assessment.

As a result of information presented during the hearing, one (1) additional deficit is awarded to the Claimant for physical assistance with eating. Because of the Claimant’s neuropathy, it is reasonable to believe she requires assistance with eating at times.

Incontinence of bladder- The Claimant wears adult diapers on a daily basis and her homemaker testified that the Claimant experiences frequent incontinence. The homemaker indicated that the Claimant is incontinent two to three times a week “a couple of times a day.” She testified that this level of incontinence was present in February 2008 at the time the PAS was completed.

PAS comments indicate that the Claimant stated she had been incontinent of bladder about two times in the week prior to the assessment and wears “big girl pants.”

As a result of testimony presented during the hearing, one (1) additional deficit is awarded for bladder incontinence as the Claimant and her witnesses offered credible testimony that the Claimant experiences incontinent episodes at least three times per week.

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 four (4) deficits on her February 2008 Aged/Disabled Waiver Program medical evaluation.
- 2) As a result of information provided during the hearing, two (2) additional deficits are awarded to the Claimant in the areas of physical assistance with eating and bladder incontinence. 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 proposal to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The two (2) 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 28th Day of May, 2008.

**Pamela L. Hinzman
State Hearing Officer**