



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 20, 2005

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 17, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Medicaid Aged/Disabled Title XIX (Home & Community-Based) Waiver 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.

The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to 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. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b]

The information submitted at your hearing reveals that your medical condition requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community-Based Services Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
WVMI
BoSS
CWVAS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

_____, WV 26651

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 20, 2005 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 convened on May 17, 2005 on a timely appeal filed January 4, 2005.

It should be noted here that benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending the results of the hearing.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The program entitled Medicaid Title XIX Waiver (HCB) 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 sister and Homemaker, Panhandle Support Services
_____, Case Manager, CWVAS
_____, RN Supervisor, Panhandle Support Services
Kay Ikerd, RN, BoSS (participating telephonically)

Judy Bolen, RN, WVMI (participating telephonically)
Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Claimant continues to be medically eligible for services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual ' 560 & 570

1. Aged/Disabled Home and Community-Based Services Manual ' 570 (D-1) - Program Eligibility for client:
Applicants for the ADW Program must meet all of the following criteria to be eligible for the Program:

- C. Be approved as medically eligible for NF level of care.

2. Aged/Disabled Home and Community-Based Services Manual ' 570.1.a. - *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 ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term service needs.
 - C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

3. Aged/Disabled Home and Community-Based Services Manual ' 570.1.b. - *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:

- A. # 24: Decubitus - Stage 3 or 4
 - B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
 - C. #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)

Grooming--- Level 2 or higher (physical assistance or more)

Dressing ---- Level 2 or higher (physical assistance or more)

Continence-- 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 assist in the home)

Walking----- Level 3 or higher (one person or two person assist 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)

D. #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.

E. #28: The individual is not (c) capable of administering his/her own medications.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department=s exhibits

D-1 Aged/Disabled Home and Community-Based Services Manual ' 560 & 570.

D-2 Notice of Denial dated December 30, 2004

D-3 PAS 2000 assessment completed December 2, 2004

D-4 Notice of Potential Denial dated December 9, 2004

VII. FINDINGS OF FACTS:

1. The Claimant=s Aged & Disabled Waiver case, hereinafter ADW, was undergoing an annual medical reevaluation to verify continued medical eligibility.
2. WVMi completed a medical assessment (D-3) on December 2, 2004 and determined that the Claimant is no longer medically eligible to participate in the ADW Program.
3. The Claimant, who was 62 years old at the time of the assessment and has been diagnosed with Non-Hodgkin's Lymphoma, was notified of the potential denial on December 9, 2004 (D-4) and advised that she had two weeks to submit additional medical information.
4. On December 30, 2004, a termination notice (D-2) was sent to the Claimant.
5. Ms. Bolen reviewed the PAS 2000 (D-2) that she completed for the Claimant on December 2, 2004. She testified that her assessment of the Claimant revealed three (3) program qualifying deficits in the following areas of the PAS:
 - Question 26a- Eating
 - Question 26b- Bathing
 - Question 26c- Dressing

6. Mr. [REDACTED] testified that additional deficits should be awarded to the Claimant for inability to vacate her residence in the event of an emergency, transferring and grooming. Mr. [REDACTED] contended that the Claimant should be awarded a point for transferring as she needs assistance getting out of bed in the morning. He stated that the Claimant has fallen in the house and was unable to get up without assistance. Mrs. _____ indicated that she cannot get up unassisted when lying flat. Ms. Bolen testified that the Claimant was able to ambulate and transfer by holding onto furniture and she did not see the Claimant's husband assist her during the assessment.
7. Regarding her inability to vacate, Mrs. _____ explained that a pellet stove is located in her living room and the living room has an exit door. She chooses to sleep on the couch rather than in a bedroom because she cannot rise from a vertical position without assistance. If a fire occurred, she stated she does not know if she would be physically able to exit the residence. She stated that the stove began emitting smoke on one occasion and she was forced to scream for her husband who was sleeping in a bedroom at the other end of the house. She explained that she is mobile during the day, but at night and upon waking she is immobile due to arthritis, 15 ruptured discs and brittle bones stemming from her cancer treatments. Ms. Bolen testified that during her assessment Mrs. _____ stated she could exit the residence with supervision in the event of an emergency. Mr. [REDACTED] contended that if the Claimant's husband actually helps her out of bed that she would require physical assistance to vacate.
8. In regard to grooming, Mrs. _____ testified that her husband applies lotion to her back as a result of nerve damage stemming from an extended case of shingles. At the time of the assessment, the lotion she was using for nerve damage was the prescription medication Zostrix. Ms. [REDACTED] contended that since the Claimant was using a prescribed medication for shingles at the time of the PAS completion and could not apply the medicine to the affected area, she should actually receive a deficit for inability to administer medication. Ms. Bolen indicated that she was not given this information during the time the PAS was completed.

VIII. CONCLUSIONS OF LAW:

As a result of testimony presented by the Claimant and her witnesses, additional deficits are awarded in the areas of inability to vacate in the event of an emergency and inability to administer medication. Because of the Claimant's inability to rise from a vertical position, she would be physically unable to vacate her residence if an emergency should arise during certain times of the day or night. Additionally, the Claimant was utilizing a prescription lotion for nerve damage at the time of the assessment, was unable to apply the medication to the affected area, and relied upon her husband for this assistance.

The two additional deficits bring the Claimant's total deficits to five, the required number for continued medical eligibility for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's benefits and services under the Aged/Disabled, Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.