



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 12, 2005

[REDACTED]
Littleton, WV 26581

Dear Mr. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 6, 2005. Your hearing request was based on the Department of Health and Human Resources proposed action to discontinue 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 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 ' 570- 570.1b (11/1/03)].

The information which was submitted at your hearing revealed that at the time of the December 07, 2004 Pre-Admission Assessment, you did not meet the eligibility criteria for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the decision of the Agency to discontinue your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Latimer, Catholic Comm. Ser.
WVMI
BoSS

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

██████████
April 12, 2005

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 6, 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. The hearing was convened on April 6, 2005 on a timely appeal filed January 13, 2004.

It should be noted that benefits were continued through this hearing process.

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 brother
- ██████████ Catholic Community Services
- ██████████ Helping Hands
- Debra Lemasters, West Virginia Medical Institute, (WVMI)
- Linda Wright, Bureau of Senior Services (by phone from BoSS)

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April 12, 2005

V. Section Continued:

Presiding at the hearing was Sharon K. Yoho, 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 Agency was correct in their decision to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Departments= Exhibits:

- Exhibit D-1 Aged/Disabled Home and Community Based Services Manual ' 560.1- 570.1b
- Exhibit D-2 Pre-Admission Screening (PAS)-2000 dated December 07, 2004
- Exhibit D-3 Potential denial letter dated December 9, 2004
- Exhibit D-4 Request for hearing dated January 3, 2005
- Exhibit D-5 Notice of proposed termination dated December 30, 2004
- Exhibit D-6 Eligibility Determination dated December 7, 2004

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) The claimant is a 52 year old male whose primary diagnosis is neuropathy, congestive heart failure, hypertension and asthma. This claimant is also experiencing renal failure and is receiving dialysis treatments three times per week.
- (2) The PAS, Pre-Admission Screening, was completed in the claimant=s home on December 7, 2004. This assessment was completed with the client and his brother both in the home. Based on the observation by the evaluating nurse and input from the client as well as his brother it was determined that the claimant=s condition at that time revealed no qualifying deficits.
- (3) The Claimant was sent a letter of Potential discontinuance of services on December 9, 2004. This notice advised that if the claimant had additional information regarding his medical condition, he could submit this for consideration. No additional information was submitted.

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April 12, 2005

VII. Section Continued:


- (4) ██████████ submitted a request for a hearing which was received by Bureau of senior Services on January 13, 2004.
- (5) Testimony offered at this hearing, supports the Agency's determination that this claimant had no qualifying deficits at the time of the re-evaluation. Ms. ██████████ stated that she had gone over the PAS thoroughly and discussed the evaluation with Ms. ██████████. They have reached the consensus that the PAS was adequate and that it reflects the claimant's current condition.
- (6) ██████████ testified that he does still have bad days where he is unable to do things for himself. This is when he is fighting a cold or other temporary ailment on the day that he has dialysis. He says there are some weeks that he has no bad days. He states that if he keeps his physical shape up and doesn't back off his exercise, the dialysis doesn't hurt him too bad.
- (7) **Aged/Disabled Home and Community Based Services Manual # 570 - 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 care.
- (8) **Aged/Disabled Home and Community Based Services Manual ' 570 - Program Eligibility for Client:**
Applicants for the ADW Program must meet all of the following criteria to be eligible for the Program:
- B. Be a permanent resident of West Virginia. The individual may be de-institutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- (7) **Aged/Disabled Home and Community Based Services Manual ' 570.1.a. - Purpose:**
The purpose of the medical eligibility review is to ensure the following:
- (1) New applicants and existing clients are medically eligible based on current and accurate evaluations.
 - (2) 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.
 - (3) The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

VII. Section Continued:

- (8) **Aged/Disabled Home and Community Based Services Manual # 570.1.b.- Medical Criteria:**
An individual must have five 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 capable of administering his/her own medication.

VIII. DECISION:

In order to qualify for Aged/Disabled Waiver services, an individual must be found to have at least five deficits at the time of the Pre-Admission Screening. A review of the claimant's condition as of December 7, 2004 revealed no qualifying deficits. Testimony and evidence presented at this hearing supported these findings.


April 21, 2005

5

VIII. Section Continued:

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the agency=s proposed action to discontinue the services offered under the Aged/Disabled Title XIX (HCB) Waiver Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.