



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

March 11, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 8, 2005. Your hearing request was based on the Department of Health and Human Resources proposed discontinuance of 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 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 October 27, 2004 Pre-Admission Assessment, you did meet the eligibility criteria for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the decision of the Agency to discontinue 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
WVMI
BoSS
PHSS

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

March 11, 2005

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 8, 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 was convened on March 8, 2005 on a timely appeal filed January 13, 2005.

All persons giving testimony were placed under oath.

Benefits have been continued through this hearing process.

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
_____, Potomac Highlands Support Services (PHSS)
_____, Aging and Family Services
_____, Aging and Family Services
B. J. Sides, WVMH (by phone)
Kay Ikerd, BoSS (by phone from BoSS)

Presiding at the hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

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IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in their decision to discontinue eligibility for services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 570 & 590

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Departments= Exhibits:

- Exhibit D-1 A/DW, Aged/Disabled Home and Community Based Services Manual ' 560.1- 570.1b
- Exhibit D-2 Eligibility Determination, dated October 27, 2004
- Exhibit D-3 Pre-Admission Screening (PAS)-2000, dated October 27, 2004
- Exhibit D-4 Letter from PHSS, dated December 16, 2004
- Exhibit D-5 Medical and Homemaker information, supplied by PHSS
- Exhibit D-6 Notice of Potential Denial, dated December 6, 2004
- Exhibit D-7 Notice of proposed termination, dated January 4, 2005

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) The Claimant is a 66 year old female who has diagnoses of Alzheimer's Dementia, Non Insulin Dependent Diabetes Mellitus, Hypertension and Chronic Obstructive Pulmonary Disease.
- (2) Ms. _____ resides alone in a Fifth floor apartment. Her assigned homemaker is with her 4 hours a day. During the remainder of her waking hours, a neighbor stays with her. She is alone during her sleeping night time hours.
- (3) The PAS evaluation completed on October 27, 2004 noted that she falls over backwards frequently and uses a cane for support. Her Gait is noted to be shuffling and unsteady. She takes a few steps forward and then staggers backward. She is also reported to fatigue quickly and require chair rest after walking 20 feet. This instability was also witnessed by this hearings officer during the claimant's walk to and from the hearing room.
- (4) The PAS, Pre-Admission Screening, determined that the Claimant=s condition at the time of the assessment warranted assignment of four (4) qualifying deficits. These deficits were in the areas of Bathing, Dressing, Grooming and incontinence.

_____.
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(3)

- (5) Included in the evaluating Nurse's overall comments is: "CT and Homemaker agree that she would be able to vacate the building with supervision. She would need frequent rest periods if use of the stairs was required. CT is certain she can get down the stairs, as she has done this."
- (6) The claimant agrees that she could get down the five flights of stairs with someone holding on to one side of her while she holds the rail. She states that if she were to try to go down them on her own, she would have to go down them on her buttocks. She recalled an incident when there was a fire alarm and a gentleman tenant, of the building, began helping her down the stairs. He ended up lifting her up and carrying her down the stairs.
- (7) Ms _____ was assessed on her (PAS) at a level 2, in the areas of Transferring and Walking, indicating the need for Supervision/Assistive Device. She was also assessed at a level 2 in the area of Orientation, indicating Intermittent Disorientation.
- (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:
 - C. Be approved as medically eligible for NF level care.
- (9) **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.
- (10) **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.
- (11) **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:

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(4)

VII. Section Continued:

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.

It had been determined that Ms. _____, at the time of the PAS, had only four deficits which were in the areas of Bathing, Dressing, Grooming and Bladder Incontinence. Testimony, functional levels assigned for Transferring, Walking and Orientation, as well as the evaluating Nurse's comments on the (PAS) support the belief that this claimant could not vacate in an emergency. The assistance which Ms. _____ would need to get down five (5) flights of stairs to escape a fire would obviously be the physical act of carrying her down the stairs. With simply supervision, frequent rest periods would be required which would increase the risk of a non-successful exit. Her Intermittent Disorientation could also hamper her ability to vacate.

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VIII. Section Continued:

After reviewing the information presented during the hearing and the applicable policy and regulations, I find that the claimant should have been assessed as having Five (5) qualifying deficits. I am ruling to **reverse** the Agency=s actions to discontinue the benefits and services 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.