



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 19, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 5, 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 does not require 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 **uphold** 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**

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 19, 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 5, 2005 on a timely appeal filed January 24, 2005. The hearing was originally scheduled for March 28, 2005 but was rescheduled at the request of Central West Virginia Aging Services.

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
_____, wife of Claimant
_____, daughter of Claimant
[REDACTED] caregiver, [REDACTED] Senior Center
[REDACTED] Case Manager, CWVAS

Kay Ikerd, RN, BoSS (participating telephonically)
Heather Randolph, 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 PAS 2000 assessment completed December 8, 2004

D-3 Letter from [REDACTED] dated December 23, 2004

D-4 Notice of Denial dated January 13, 2005

D-5 Notice of Potential Denial dated December 13, 2004

Claimant's Exhibits

C-1 Request for Level of Care Change dated April 8, 2005

C-2 [REDACTED] Area Medical Center Patient Diagnostic Report

C-3 Letter from Dr. [REDACTED] dated March 16, 2005

C-4 Letter from Dr. [REDACTED] dated March 16, 2005

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-2) on December 8, 2004 and determined that the Claimant is no longer medically eligible to participate in the ADW Program.

3. The Claimant was notified of the potential denial on December 13, 2004 (D-5) and advised that he had two weeks to submit additional medical information.
4. On January 13, 2005, a termination notice (D-4) was sent to the Claimant.
5. Ms. Randolph reviewed the PAS 2000 (D-2) that she completed for the Claimant on December 8, 2004. Ms. Randolph testified that her assessment of the Claimant revealed zero (0) program qualifying deficits. Ms. Randolph stated the Claimant walked through his residence without having to steady himself on the date of the assessment, and that he reported being able to dress and groom independently. He reported that he would not need assistance bathing if his shower was repaired.
6. Ms. Randolph testified that additional information (D-3) was reviewed on January 6, 2005, however, the information did not change the number of deficits recorded on the PAS 2000.
7. Ms. [REDACTED] testified that the Claimant has had three fractured lumbar vertebrae and two fractured ribs, and is in need of physical assistance with transferring, ambulating, bathing, dressing and grooming. The Claimant's health is deteriorating and the homemaker agency had requested additional homemaker service hours (C-1) in April 2005, she stated. In addition, Ms. [REDACTED] testified that the homemaker agency nurse feels that the Claimant would be unable to vacate his residence in the event of an emergency. Ms. [REDACTED] referred to a patient diagnostic report from Dr. [REDACTED] (C-4) which indicated the Claimant showed an "intense uptake" on his bone scan of November 30, 2004.
8. Ms. [REDACTED] testified that osteoporosis had caused the Claimant's vertebrae and rib fractures. She stated these conditions were present at the time the PAS was completed. She also stated the Claimant has incontinence of urine at least once a day and incontinence of bowel about two times per week, however, he does not like to admit to these problems. She stated that her plan of care indicates the Claimant requires assistance with bathing, dressing and grooming. Additionally, Ms. [REDACTED] testified that the Claimant has had cancer, has lost weight and doesn't like to tell people how much help he actually needs. She believes he needs assistance with walking as he suffers from hypertension and becomes unsteady when his blood pressure drops. She stated the Claimant requires supervision in transferring and that he pushes off a chair to stand from a seated position. It was noted the Claimant needs someone to walk behind him when walking and transferring. He also receives assistance with bathing and cannot fully dress himself.
9. Ms. _____, who was present during the PAS completion, testified that her father has to grab items and hold onto them in order to walk through the house. She stated that she did not wish to correct her father's answers to the PAS questions in front of the individuals present that day.
10. Ms. _____ stated the Claimant was probably having a "good day" on the date the PAS was completed and was likely "showing off" to make himself appear stronger than he actually is. Ms. _____ testified that she has helped the Claimant bathe and dress for many months, and has shaved him with an electric razor since November 2004.
11. Mr. _____ testified that he was feeling the best he had felt for some time on the date the

PAS was completed and that he hasn't felt as good since that day. He admitted that he has incontinence of his bowels about two times per week and incontinence of urine about once a day. He stated that, in the event of an emergency, "it would take me a little time" to get out of the house.

VIII. CONCLUSIONS OF LAW:

As a result of testimony presented by the Claimant and his witnesses, the Claimant is assigned one point each in the areas of bathing, dressing, grooming and bladder incontinence. The Claimant admitted to having daily bladder incontinence, while his homemaker testified that she has assisted him with bathing, dressing and grooming for several months. Because the Claimant was able to ambulate and transfer without assistance on the date the PAS was completed, I am unconvinced that he would have been physically unable to vacate his residence in the event of an emergency during that time period.

These changes bring the Claimant's total number of points to four and the Claimant continues to lack the total of five points required to meet ADW medical eligibility requirements.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** 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.