



Joe Manchin III
Governor

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

Martha Yeager Walker
Secretary

June 21, 2005

Dear Ms_____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 26, 2005. Your hearing request was based on the Department of Health and Human Resource's action to discontinue 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 4, 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 Repayment Officer
Member, State Board of Review

CC: Chairman, Board of Review
Keeney, WVM
Boggess, BoSS
[REDACTED] PHHS

June 21, 2005

**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 26, 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 May 26, 2005 on a timely appeal, filed January 24, 2005.

All persons giving testimony were placed under oath.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

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:

____ Potomac Highlands Support Services (PHSS)

____ RN Senior Life Services of _____ County

____ Informal Support and Homemaker

Nada Lind, WVMI (by phone)

Libby Boggess, 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. QUESTIONS 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:

Department's Exhibits:

- Exhibit D-1 Aged Disabled Waiver Services Manual 560.1 570.1b
- Exhibit D-2 Eligibility Determination, dated October 4, 2004
- Exhibit D-3 Pre-Admission Screening (PAS)-2000, dated October 4, 2004
- Exhibit D-4 Notice of Termination dated January 13, 2005
- Exhibit D-5 Notice of Potential denial dated December 6, 2004
- Exhibit D-6 Letter from Dr. [REDACTED] dated December 14, 2004
- Exhibit D-7 Letter from [REDACTED] RN dated December 20, 2004
- Exhibit D-8 Letter from [REDACTED] PHSS dated December 13, 2004

VII. FINDINGS OF FACT:

(1) The Claimant is a 64-year-old female who has primary diagnoses of Chronic Obstructive Pulmonary Disease, Hypertension, Osteoporosis and Gastro Esophageal Reflux Disease. This claimant uses continuous oxygen in her home. She does have a cigarette smoking habit that she has not been able to overcome and must remove oxygen to smoke. Ms. _____'s Aged Disabled, Waiver (ADW) eligibility was undergoing an annual reevaluation in October 2004.

(2) The Pre-Admission Screening (PAS) was completed in the claimant's home on October 4, 2004 with the homemaker present.

(3) The PAS completed on December 4, 2004 assigned deficits in the areas of vacating, bathing, dressing and grooming. The evaluating nurse saw the claimant ambulate independent of the physical assistance of others. The claimant and homemaker reported to the nurse that she sometimes uses furniture to steady herself as she ambulates in the home. The claimant reported to the evaluating nurse that she does have a problem with urinary incontinence "about once a week."

(4) The areas of uncertainty identified by Ms. [REDACTED] and Ms. [REDACTED] were in the areas of ambulation and incontinence. Exhibit D-6, letter from Dr. [REDACTED] states that Ms. _____ has a

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urinary incontinence problem and that she has a limited ability to walk for long distances. When Ms. [REDACTED] contacted Dr. [REDACTED] by phone, he advised that he did not have knowledge of the frequency of the incontinence. Exhibit D-7, letter from [REDACTED] states that: "while this patient is not completely incontinent, she does experience frequent episodes. She is very reluctant to talk about this but said that she experiences episodes of stress incontinence frequently when she coughs and incontinence due to urgency because she is often not able to access the bathroom in time." Exhibit D-8, letter from [REDACTED] also indicates incontinence is a problem that should have been considered as a deficit.

(5) Ms. _____ testified that she has worn sanitary napkins for a long time for her incontinence problem and now wears adult diapers. She says she is wet everyday. She stated that she was embarrassed and did not want to admit how bad it was and did not realize that it was important. She says she leaks every time she coughs.

VIII. CONCLUSIONS OF LAW:

(1) 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:

- A. Be 18 years of age or older
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF 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 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.

IX. 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 (4) deficits, which were in the areas of vacating, bathing, dressing and grooming. Testimony, during this hearing, supports that these areas as well as the area of bladder incontinence should have been identified as deficits. The claimant, who would be the only person who could accurately address the frequency of incontinence, misled the evaluating nurse to believe there was no major problem in that area. Testimony and evidence presented at this hearing clearly concludes that incontinence is a regular

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daily problem.

After reviewing the information presented during the hearing and the applicable policy and regulations, I find that the claimant was not accurately assessed and should have been assigned 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.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29