



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, West Virginia 24901
Telephone (304) 647-7476 Fax: (304) 647-7486

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 16, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 19, 2005 for the Aged/Disabled Home and Community Based Services Waiver (ADW) Program. Your hearing request was based on the Department of Health and Human Resources' action to deny services under the ADW 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.

Eligibility for the Aged/Disabled Home and Community Based Services Waiver (ADW) Program is based on current policy and regulations. One of these regulations state as follows: An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of assessment elements on the PAS. (Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003)

The information which was submitted at your hearing revealed that after review of the current PAS-2000, you do not meet the five (5) deficits needed in order to qualify medically for the ADW Program.

It is the decision of the State Hearing Officer to uphold the action of the Agency to deny services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] Mountain State Home Health Care, Inc.
Kay Ikerd, BoSS
Oretta Keeney, WVM I

**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 was convened on May 19, 2005 on a timely appeal, filed February 11, 2005.

It should be noted here that the claimant's benefits have been denied.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

_____ Case Manager, Mountain State Home Health
Christine Miller, RN, WVMI (By Telephone)
Kay Ikerd, RN, BoSS (By Telephone)

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the claimant meets the medical requirements needed to receive ADW services.

V. APPLICABLE POLICY:

Section 570 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

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.
- 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 DHHROffice, or the SSA if an active SSI recipient.

E. Choose to participate in the ADW Program as an alternative to NF care.

Section 570.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

Section 570.1.a of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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 level of care (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.

Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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 persons assist in the home)

Walking - Level 3 or higher (one 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 - (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

E. #28: Individual is not capable of administering his/her own medications.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits:

Exhibit D-1) Sections 570, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003

Exhibit D-2) Hearing Request dated 02/11/05

Exhibit D-3) Form PAS-2000 dated 01/11/05

Exhibit D-4) Notification letter dated 02/02/05

Exhibit D-5) Notice of potential denial dated 01/13/05

Exhibit D-6) Initial Medical Necessity Evaluation Request

Exhibit D-7) Statement from [REDACTED]

VII. FINDINGS OF FACT:

1) An initial medical assessment was completed on the claimant 01/11/05. (Exhibit D-3) The claimant was notified in a letter dated 02/02/05 that services were denied. Reason: Only four deficits were found during the assessment - vacate a building, bathing, grooming, and dressing (Exhibit D-4) The claimant requested a hearing 02/11/05. (Exhibit D-2)

2) Christine Miller reviewed the PAS-2000 completed 01/11/05 (Exhibit D-3) The findings were:
#24 No Decubitus
#25 In the event of an emergency, the individual is physically unable vacate the building.

#26a Eating: Level 1 Self/Prompting:

#26b Bathing: Level 2 Physical Assistance:

#26c Dressing: Level 2 Physical Assistance

#26d Grooming: Level 2 Physical Assistance:

#26e Bladder: Level 1 Continent

#26f Bowel: Level 1 Continent

#26g Orientation: Level 1 Oriented

#26h Transferring: Level 2 Supervised/Assistive Device

#26i Walking: Level 2 Supervised/Assistive Device

#26j Wheeling: Level 1 No Wheelchair

#27 Special Needs - Physical Therapy

#28 Individual is capable of administering her own medication.

The claimant was the only one present for the assessment. The findings were reviewed with the claimant and she voiced understanding of

the assessment.

3) The claimant lives alone and is 85 years of age. She walks with a cane. She uses the arms of a chair to push herself out of the chair. She has to move slowly. She falls a lot at night. Her niece calls her during the morning to check on her. She cannot bend nor stand for long periods of time. She marks on the calendar when to take her medication. She administers her own medication. The claimant no longer drives.

4) Ms. [REDACTED] noted in the assessment that the claimant has difficulty walking and transferring. The score was a level 2 which means the claimant uses an assistive device. The claimant lives alone and the next level (3) is one person assist with walking/transferring.

VIII. CONCLUSIONS OF LAW:

1) An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of assessment elements on the PAS.

2) Four deficits were found on the assessment completed 01/11/05. Those were physical assistance with bathing, grooming and dressing and the individual is physically unable to vacate in the event of an emergency, .

3) There was no convincing evidence or testimony presented during the hearing that would change the initial assessment.

4) The required five (5) deficits could not be established. Therefore, the claimant does not meet the medical qualifications for Aged/Disabled Waiver services.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does not meet the medical criteria for the ADW Program. The Agency is upheld in the decision to deny the claimant services under the Aged/Disabled Home and Community-Based Services Waiver (ADW) Program

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29