



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

June 13, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 1, 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 requires 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 **reverse** 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
CCIL

**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 June 13, 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 June 1, 2005 on a timely appeal filed February 28, 2005.

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

_____, daughter of Claimant and Homemaker, Panhandle Support Services

_____, RN, Case Manager, CCIL

Kay Ikerd, RN, BoSS (participating telephonically)

Debra LeMasters, 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

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 January 18, 2005
- D-3 Termination notice dated February 10, 2005
- D-4 Notice of Potential Denial dated January 25, 2005

VII. FINDING OF FACTS:

1. The Claimant=s Aged & Disabled Waiver case, hereinafter ADW, was undergoing an annual medical reevaluation to verify continued medical eligibility.
2. West Virginia Medical Institute completed a medical assessment (D-2) on January 18, 2005 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 January 25, 2005 (D-4) and advised that she had two weeks to submit additional medical information. Ms. Lemasters testified that no additional information was submitted.
4. On February 10, 2005, a termination notice (D-3) was sent to the Claimant.
5. Ms. Lemasters reviewed the PAS 2000 (D-2) that she completed for the Claimant on January 18, 2005. She testified that her assessment of the Claimant revealed three (3) program qualifying deficits in the following areas of the PAS:
 - Question 26b- Bathing
 - Question 26d- Grooming
 - Question 26e- Bladder Incontinence
6. Ms. _____ stated that her mother was confused and did not understand all information discussed on the date of the PAS assessment. Testimony was provided in regard to the following potential deficits:

Dressing- Ms. _____ testified that her mother cannot dress herself and has not put on her own socks and shoes for years. Ms. _____ stated she has assisted her mother in dressing for some time.

Eating- Ms. _____ testified that her mother does not cut up her own food. She indicated she has been cutting up meats and vegetables for her mother for several years as Ms. _____ is prone to choking. In addition, Ms. _____ indicated she does not use a knife or any object with a blade.

Medication Administration- Ms. _____ stated she organizes the Claimant's medications in a container. The Claimant administers her own insulin, but Ms. _____ indicated this activity is monitored to ensure proper dosage.

Walking and Transferring- Ms. _____ testified that her mother uses a walker and cane in the house, and has difficulty getting in and out of chairs. It was noted the Claimant needs assistance maneuvering down the last step on her porch. The Claimant also utilizes a wheelchair at times.

Ability to Vacate- Ms. _____ stated she does not believe her mother could vacate her residence in the event of an emergency. Ms. _____ indicated she could attempt to exit the residence using her walker or wheelchair.

Other testimony concerned grooming, bathing and bowel incontinence. The Claimant was awarded deficits on the PAS for grooming and bathing, and received a deficit for bladder incontinence. Ms. Ikerd testified that since the Claimant was already awarded a deficit for one type of incontinence, no additional deficits could be awarded in this area.

7. Ms. Lemasters indicated that the Claimant was alert and oriented on the date of the assessment, and the Claimant had indicated she dresses herself. It was noted in Ms. Lemasters' PAS comments that the Claimant had some difficulty getting out of her chair and pushed herself up using the chair arms, but ambulated independently across the room on the date of the assessment with a steady gait. She indicated the Claimant's former case manager was present during the assessment and all parties agreed with the assessment. Ms. Ikerd stated the Claimant's ability to administer her own insulin is representative of her level of motor skills.

8. 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.

9. 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.

10. 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.

VIII. CONCLUSIONS OF LAW:

As a result of testimony and evidence presented during the hearing, additional deficits are awarded in the areas of dressing and eating. The Claimant's daughter indicated that the Claimant has required assistance for some time with dressing and that she has cut up the Claimant's food for several years due to problems with choking.

No deficits are awarded for medication administration, vacating, transferring and walking. No testimony was offered indicating the Claimant is physically unable to swallow medication and the Claimant administers her own insulin with monitoring. Since the Claimant rose from a chair and walked through the residence unassisted on the date of the assessment, no deficits are awarded for walking and transferring. The Claimant's ability to vacate in the event of an emergency is unclear.

This brings the Claimant's total number of deficits to five (5), the required number for Aged/Disabled Waiver Program qualification.

IX. DECISION:

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