



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
April 11, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

[REDACTED]
Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 9, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue your benefits/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.

Medicaid, Aged/Disabled (HCB) Title XIX Waiver is granted to those individuals who continue to meet all eligibility requirements. 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. In order to medically qualify for Aged/Disabled Waiver services an individual must have a total of five (5) qualifying deficits in specific categories of nursing services. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b (11/1/03)].

The information which was submitted at your hearing failed to establish 5 qualifying deficits.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to discontinue your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the January 5, 2005 notification letter.

Sincerely,

Ron Anglin
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Boggess, BoSS
Oretta Keeney, WVM
[REDACTED] 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 April 11, 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 9, 2005 on a timely appeal received by the state hearings officer January 31, 2005. It should be noted here that benefits under the Medicaid Title XIX Waiver (HCB) Program have continued. 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's sister

_____, CM, CWVAS

_____, RN/Senior Care of North Central WV (Homemaker Agency)

Kay Ikerd, RN, BoSS, (by phone)

Kem Honaker, RN, WVMI (by phone)

Presiding at the hearing was Ron Anglin, 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 ' 570- 570.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- E-1- A/D Waiver Manual 560.1- 570.1.b
- E-2- WVMi Independent Review (PAS) 11/30/04
- E-3- Notification 12/13/04 (Potential Denial)
- E-4- Notification, 1/5/05 (Termination)

VII. FINDINGS OF FACT:

(1) The claimant=s A/D Waiver case was due for an annual review and a WVMi Independent Review (E-2) was completed by the WVMi on November 30, 2004. WVMi determined that the claimant was no longer medically eligible for Waiver services and a notification of potential closure was mailed December 13, 2004. A termination notification was mailed to the claimant January 5, 2005. A hearing request dated January 8, 2005 was received by BMS January 12, 2005 and by the BOR/Hearings Officer January 31, 2005. The claimant was notified of the hearing in a notification dated February 1 and the hearing was convened March 9, 2005.

(2) During the hearing Exhibits as noted in Section VI above were presented.

(3) Kay Ikerd provided information concerning waiver program policy and requirements from Exhibit E-1.

(4) Kem Honaker noted from the evaluation (E-2) which she completed 11/30/04 in the claimant=s home. Claimant found to be mentally unable to vacate in an emergency. Under item 26, claimant has qualifying deficit only in continence. Claimant only requires supervision/prompting with medication administration, which is not considered a deficit. Total deficits found were 2 while 5 are required.

(5) _____ testified that she must watch claimant when he goes to the bathroom and help him clean up. He will not eat unless food is prepared for him. He gets very disoriented. He has lived with her 14 years and she provides care. Doesn't feel he could handle administration of medication.

(6) [REDACTED] testified that the claimant has been on the program about 3 years and he receives 62 hours per month of care.

VIII. CONCLUSIONS OF LAW:

- (1) Aged/Disabled Home and Community Based Services Manual ' 570:
Applicants 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.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 (c) capable of administering his/her own medications.

IX. DECISION:

The agency acknowledged 2 qualifying deficits – Vacating a building, and Continence. Testimony offered failed to support a finding of additional functional deficits rising to the level of fully qualifying.

In conclusion, evidence offered established only 2 qualifying deficits. Eligibility for the program requires 5 qualifying deficits. This number of deficits is required to demonstrate that an individual requires the level of care provided in a nursing facility or the Medicaid (HCB) Waiver Program. I am therefore ruling to **uphold** the action of the Agency to terminate benefits under the Medicaid Waiver Program as set forth in the January 5, 2005 notification.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.