



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

December 29, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 28, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Aged/Disabled (HCB) Title XIX Waiver Services 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 Waiver Program is based on current policy and regulations. Some of these regulations state as follows: 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 Sections 570- 570.1b].

Information submitted at your hearing revealed that you do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CQVAS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,

Claimant,

v.

Action Number: 05-BOR-6365

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on December 29, 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 December 28, 2005 on a timely appeal filed August 4, 2005. The hearing was originally scheduled for October 4, 2005 but was rescheduled at the request of CWVAS. The hearing was then scheduled for December 2, 2005 but was rescheduled due to inclement weather.

II. PROGRAM PURPOSE:

The program entitled Aged/Disabled Waiver 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
_____, Claimant's wife
[REDACTED] Homemaker, RN, Ultracare
[REDACTED] RN, Case Manager, CWVAS
Jane Meadows, RN, WVMI
Kay Ikerd, RN, BoSS (participating telephonically)

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 570
- D-2 Pre-Admission Screening (PAS) 2000 assessment completed on June 27, 2005
- D-3 Notice of Potential Denial dated July 11, 2005
- D-4 Notice of Denial dated July 26, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing a reevaluation to determine continued medical eligibility.
- 2) West Virginia Medical Institute completed a medical assessment (D-2) on June 27, 2005 and determined that the Claimant is not medically eligible to participate in the ADW Program.
- 3) The Claimant was notified of the potential denial (D-3) on July 11, 2005 and advised that he had two weeks to submit additional medical information.
- 4) On July 26, 2005, a denial notice (D-4) was sent to the Claimant.

5) Ms. Meadows reviewed the PAS 2000 (D-2) and testified that the only deficit established as a result of the assessment was for physical assistance in grooming.

6) Witnesses for the Claimant contended that additional deficits should be awarded in the following areas:

Physical assistance with bathing and dressing – Witnesses testified that the Claimant requires physical assistance with bathing and dressing. The Claimant stated that he may have misunderstood these questions during the assessment.

Eating – Witnesses testified that the Claimant's wife cuts up his food and helps feed him as a result of tremors in his upper extremities.

Ms. Meadows testified that these difficulties in bathing, dressing and eating were not reported at the time the PAS was completed.

7) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)- Program Eligibility for client:

Applicants for the ADW Program must meet the following criteria to be eligible for the Program:

C. Be approved as medically eligible for NF Level of Care.

8) Aged/Disabled Home and Community-Based Services Manual Section 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 A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.

C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

9) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW 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.

VIII. CONCLUSIONS OF LAW:

- 1) The Claimant had been awarded one (1) deficit as a result of the PAS completed on June 27, 2005.
- 2) The Claimant and his witnesses testified regarding his need for physical assistance with bathing, dressing and eating.
- 3) Five (5) deficits are required to establish medical eligibility for the Aged/Disabled Waiver Program.
- 4) Even if the Claimant was awarded additional deficits in the areas of bathing, dressing and eating, his deficits would total only four (4).
- 5) The Agency's proposal to terminate the Claimant's benefits under the Aged/Disabled Waiver Program is correct since the required number of deficits cannot be established.

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

ENTERED this 29th Day of December, 2005.

**Pamela L. Hinzman
State Hearing Officer**