



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 6, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 16, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue services under the Aged Disabled Waiver, A/DW, 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 A/DW 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 ' 570- 570.1b (11/1/03)].

The information which was submitted at your hearing revealed that at the time of the August 4, 2005 Pre-Admission Screening (PAS) assessment, you did not meet the eligibility criteria for the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **uphold** the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Bogess, BoSS - Keeney, WVMI - [REDACTED] CWVAS - [REDACTED] WVLSP

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

_____,

Claimant,

v.

Action Number: 05-BOR-6588

**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 November 16, 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 November 16, 2005 on a timely appeal, filed September 7, 2005.

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

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's Witnesses:

[REDACTED] Central WV Aging Services
[REDACTED] Homemaker

Department's Witnesses:

Brian Holstine, Bureau of Senior Services by speakerphone
Nada Lind, Nurse WVMH by speakerphone

Claimant's Representative, [REDACTED] WVLSP

Presiding at the Hearing was Sharon K. Yoho, 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 their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Departments' Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual 570, 570.1, 570.1.a
- D-2 Pre-Admission Screening, PAS, completed August 4, 2005
- D-3 Notice of potential denial, dated August 16, 2005
- D-4 Notice of denial, dated August 31, 2005
- D-5 Eligibility Determination, dated August 4, 2005

Claimant's Exhibits:

- C-1 Letter from Dr. [REDACTED]

VII. FINDINGS OF FACT:

- 1) Mr. _____ is a 55-year-old male who has primary diagnosis of Degenerative Joint Disease (affecting hips and knees) and Morbid Obesity.

- 2) WV Medical Institute completed an annual evaluation on Mr. _____'s active A/DW case on August 4, 2005 in the claimant's home. The nurse completed the evaluation with information gathered from the claimant and his homemaker, [REDACTED]
- 3) The evaluating nurse assigned two (2) qualifying deficits in the areas of vacating in the event of an emergency and in grooming.
- 4) The claimant's witnesses raised issues in the areas of transferring, wheeling, bathing, urinary incontinence and eating.
- 5) Mr. _____ uses a motorized wheel chair most times. He is able to operate this chair independently and transfer to and from this chair. This chair is often times inoperable and he must use a manual wheel chair, which he is not able to independently operate. He also requires hands on assistance in transferring to and from the manual chair, which is higher than the motorized chair.
- 6) The homemaker does not assist the claimant with bathing or eating. Mr. _____ and the homemaker advised the nurse during the PAS that he bathes himself and that he does not need assistance with eating. He reported to the nurse that he could cut up his solid food. He also reported that he bathes himself using a shower chair and a sprayer. Mr. _____ testified that it is hard to tell a woman that he does not bathe.
- 7) The homemaker testified that she has found urine on the floor but not on the sheets. Mr. _____ uses a plastic bottle for urination during the night when he cannot get to the bathroom easily. He sometimes spills or overflows the bottle. The claimant stated during the hearing that it is hard to tell a woman that he wets his pants and sheets.
- 8) A letter from Mr. _____'s physician reports that the claimant needs help with transferring and wheeling and that he has urinary incontinence.
- 9) Aged/disabled Home and Community Based Services Manual §570 – Program Eligibility for Client:

Applicants for the A/DW 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 A/DW Program as an alternative to NF care.

- 10) 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 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.
- 11) 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 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 Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits in order to qualify medically for the A/DW program benefits.

- 2) The PAS completed on August 4, 2005 assigned one (1) deficit in item C. #26, of Chapter 570.1.b in the areas of grooming. It assigned one (1) deficit in item #25 for inability to vacate in an emergency.
- 3) Testimony and evidence presented regarding his transfer and wheeling needs was convincing enough to this Hearing Officer to make a determination that the nurse should have assessed additional deficits in those areas. Mr. _____ is required to use a manual wheel chair often.
- 4) Testimony and evidence was not conclusive in the areas of bathing, eating and bladder incontinence. Mr. _____ clearly does not receive assistance in bathing and the lack of body odor during this hearing indicates that bathing is taking place. He does not receive assistance with eating. The claimant is unable to get to the bathroom at times and must urinate in a bottle. He has occasional times when he does not make it to either the toilet or the plastic bottle, but there is indication that this is seldom.
- 5) Policy stipulates in §570, C. and E. that the client must be approved as medically eligible for Nursing Facility Level of Care and choose to participate in the ADW Program as an alternative to Nursing Facility Care. Information obtained during this hearing clearly demonstrates that this claimant is not in need of nursing facility care.

IX. DECISION:

After reviewing the information presented during this hearing, the applicable policy and regulations, it is the finding of this hearing officer that the claimant should have been assessed with four (4) qualifying deficits at the time of the August 2005 assessment. I am ruling to **uphold** 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

ENTERED this 6th Day of December 2005.

**Sharon K. Yoho
State Hearing Officer**