



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
May 31, 2006

Martha Yeager Walker
Secretary

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing convened April 24, 2006. 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 and Disabled (HCB) Services Manual §570- 570.1b].

The information submitted at your hearing established a minimum of 5 qualifying deficits, demonstrating that you require the *level of care* commonly provided in a nursing facility.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to discontinue your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the January 20, 2005 notification letter.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Boggess, BoSS
[REDACTED] WVM
[REDACTED] Central WV Aging Services

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

_____,
Claimant,

v.

Action Number 06-BOR- 1030

West Virginia Department of Health and Human Resources,
Respondent.

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 30, 2006 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 April 24, 2006 on a timely appeal requested February 2, 2006 and received by the State Hearings Examiner March 6, 2006. .

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

_____,
_____,

CM, CWVAS

Care Provider

Kay Ikerd, RN, Bureau of Senior Services (by phone)

██████████, RN, West Virginia Medical Institute (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner 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 §570.1.
- E-2- WVMi Independent Review (PAS), 12/21/05
- E-3- Notification 1/4/06 (Potential Denial)
- E-4- Notification, 1/20/06 (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 December 21, 2005.
- 2) WVMi determined that the claimant was no longer medically eligible for Waiver services and a notification of potential closure was mailed by the agency January 4, 2006.
- 3) The agency mailed a notification of termination to the claimant January 20, 2006.
- 4) A hearing request dated February 1, 2006 was received by the Bureau for Medical Services (BMS) February 2, 2006 and by this examiner March 6, 2006.
- 5) During the hearing, exhibits as noted in Section VI above were accepted.
- 6) Testimony was heard from the parties listed in section III above. All persons giving testimony were placed under oath.

7) On the basis of the medical evaluation completed December 21, 2005 and testimony of the WVMI RN who completed the assessment, 4 qualifying deficits were acknowledged- eating, bathing, dressing and grooming.

8) Sworn testimony offered by and on behalf of the claimant reveals that the claimant has little use of her hands due to rheumatoid arthritis. As a rule her aide puts medication in her mouth as her hands usually cannot hold pills. There are few days when she is able to hold pills with her hands.

9) The Aged/Disabled Home and Community Based Services Manual § 580.2.b states in part: All clients must be evaluated at least annually in order to confirm their medical eligibility for continued services and to establish the LOC (level of Care) they require.

10) The Aged/Disabled Home and Community Based Services Manual § 570 reveals that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care.

11) The 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 assessment elements on the medical evaluation- **Decubitus** - Stage 3 or 4; **ability to vacate a building***; **functional abilities** of individual in the home - **eating, bathing, grooming, dressing** (all Level 2 or higher physical- assistance or more), **continence*** (Level 3 or more- must be total incontinent; **orientation, transferring, walking, wheeling*** (all Level 3 or higher- personal assist); **skilled needs; ability to self- medicate***.

* **Vacating a building**- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition

* **Incontinence**- defined as when the recipient has no control of bowel or bladder functions at any time

* **Wheeling**- 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.

* **Ability to self medicate**-A person is incapable of self medicating if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

VIII. CONCLUSIONS OF LAW:

1) Continuing eligibility for the Medicaid Aged and Disabled Waiver Program is determined based on an annual assessment of the individual's functional ability in a number of designated elements pertaining to the activities of daily living. Evidence reveals that such an evaluation was completed by the West Virginia Medical institute on December 21, 2005.

2) Individuals medically eligible for the ADW program must meet the same criteria as

those individuals medically eligible for a nursing facility level of care. This entails a finding that the individual possesses a specified number of functional deficits in designated activities of daily living. The evaluation completed December 21, 2005 found the claimant required a nursing level of care in 4 categories – eating, bathing, dressing and grooming.

3) The following elements are considered in the eligibility assessment: Decubitus, the individual's ability to vacate a building in an emergency, functional abilities of individual in the home (eating, bathing, grooming, dressing, continence, orientation, transferring, walking, wheeling); skilled needs; and ability to self-administer medication. Evidence offered during the hearing, established significant functional limitation in the claimant's ability to self-medicate. Evidence failed to convincingly establish that the claimant was able to self-medicate on a regular basis. She is unable, except occasionally, to grasp pills and medication is routinely given to her orally. This situation creates 1 additional qualifying deficit.

4) A minimum of five specified deficits, of a nursing care level, must be established for an individual to qualify medically for the ADW Program. The agency acknowledged 4 qualifying deficits and evidence established 1 additional deficit (medication administration) for a total of 5.

IX. DECISION:

The agency's determination as set forth January 20, 2006 notification is **reversed**. This hearing clearly established 5 fully qualifying deficits and continues to be medically eligible for the program.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 31st Day of May 2006

Ron Anglin
State Hearing Examiner

THE CLAIMANT'S RECOURSE TO HEARING DECISION

A. CIRCUIT COURT

An adverse decision of a State Hearing Officer is subject to judicial review through a Writ of Certiorari (West Virginia Code 53-3-1 et seq.) filed in the Circuit Court of Kanawha County within four (4) months from the date of the hearing decision.

The court may determine anew the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision may be appealed to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATES DEPARTMENT OF AGRICULTURE

If the hearing decision involves food stamps and you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.