



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 20, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 11, 2006. 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 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 November 15, 2005 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under 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,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BOSS
CCIL
WVMI

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

_____ **Claimant,**

v.

Action Number: 06-BOR-1174

**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 July 11, 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 July 11, 2006 on a timely appeal filed April 10, 2006.

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:

- claimant

██████████ – Homemaker WV Choice

██████████ – Case Manager CCIL

Department's Witnesses:

Brian Holstein-Bureau of Senior Services by phone

██████████ - WVMI nurse by phone

Presiding at the Hearing was Melissa Hastings, 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 Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §570**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §570, 570.1 a,b.

D-2 Pre-Admission Screening, PAS, completed November 15, 2005

D-3 Notice of potential denial dated November 28, 2005

D-4 Notice of termination dated December 13, 2005

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 64 year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on November 15, 2005.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant, homemaker, homemaker RN and case manager parti____ing. The evaluating nurse determined that the claimant had only two (2) qualifying deficits. She assigned a deficit for Ms. _____'s need for physical assistance in bathing and grooming.

- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was End Stage Renal Disease.
- 4) Claimant and her representative, Case Manager [REDACTED] contend that Ms. _____ should have been awarded deficits for her inability to vacate the building, dressing and walking.
- 5) The Pre-Admission Screening form page 2 of 4 section 25c (D2) indicates that claimant was assessed as a level 1 Self/Prompting in the area of dressing. Evaluating nurse made this assessment based on claimant's demonstrated ability to reach her lower body while sitting down and claimant's statement to this affect.
- 6) Testimony received from both the claimant and the homemaker during the hearing indicates that while claimant may be able to reach her lower body while sitting down, she is too weak to pull up her pants and at times her fingers lock making it impossible to pull up her pants. The homemaker assists her in putting on pants regularly.
- 7) Testimony received during the hearing from all three of claimant's witnesses indicate that on the three days per week that Ms. _____ receives dialysis she is much weaker than on her non dialysis days. The Pre-Admission screening form was completed on a non dialysis day.
- 8) The Pre-Admission Screening form page 2 of 4 section 25i (D2) indicates that the claimant was assessed as a level 2 Supervised/Assistive Device in the area of walking. While in the home the evaluating nurse observed claimant rise from the couch and ambulate across the room using a cane. Testimony received during the hearing confirmed that claimant uses cane at all times when ambulating in the home. Testimony from Homemaker and claimant indicate that claimant requires assistance at times getting up and down due to pain and weakness.
- 9) 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.
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- 10) 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.

11) 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)
- B. Unable to vacate 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. (Item 25, I and 33, on the PAS 2005).
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).
 - 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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
 - 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 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. 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. (Item 26 on the PAS 2005)
- E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications 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) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMi nurse assigned the claimant two (2) qualifying deficits in the areas of bathing and grooming.
- 2) The issues raised at the hearing were in the areas of Dressing, Walking and Ability to Vacate a Building.
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on November 15, 2005 .
- 4) Evidence and testimony admitted during this hearing reveal that in the contested area of Dressing that claimant does meet the level 2 definition requiring Physical Assistance and should be awarded a deficit.
- 5) Evidence and testimony admitted during this hearing confirm that the assessment of a level 2 Supervised/Assistive Device in the contested area of Walking was appropriately assigned by the evaluating nurse.
- 6) The Ability to vacate a building category was appropriately determined based on policy requiring a level 3 assessment in walking and/or a level 3 assessment in orientation. Walking was the only item contested by the claimant and the level 2 assessment was appropriately assigned. The issue of Orientation was not contested during this hearing.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, a determination has been made that claimant meets the criteria for three (3) deficits in the areas of Bathing, Dressing and Grooming. Policy requires five (5) deficits to be eligible for the Aged/Disabled Waiver Program therefore it is the decision of the Hearings Officer to **UPHOLD** the agency's proposed action to terminate services. The **RIGHT OF APPEAL:**

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of July 2006.

Melissa Hastings
State Hearing Officer