



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 12, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 23, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Aged and Disabled Waiver case.

In arriving at a decision, the State Hearings 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 and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows: Applicants for the ADW 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 ADW Program as an alternative to NF care. Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT).

The information submitted at your hearing revealed: You meet the medical eligibility criteria for continued Waiver Services.

It is the decision of the State Hearings Officer to REVERSE the PROPOSAL of the Department to close the Aged and Disabled Waiver case.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Kay Ikerd, RN – BoSS
[REDACTED], RN – WVMI
[REDACTED] RN – MountainHeart Community Services

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

_____,

Claimant,

v.

Action Number: 06-BOR-1180

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

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 12, 2006 for Ms. _____. 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 scheduled for June 23, 2006 on a timely appeal filed February 21, 2006.

It should be noted here that Mr. _____ was receiving benefits at the time of the hearing. A pre-hearing conference was not held between the parties and, Mr. _____ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver Services 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:

[REDACTED], Claimant
[REDACTED], RN/Case Manager - MountainHeart Community Services
[REDACTED], Homemaker – Integrated Resources
Kay Ikerd RN – Bureau of Senior Services (BoSS)*
[REDACTED], RN – West Virginia Medical Institute (WVMI)*
* Participated by Telephone Conference

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Does Mr. _____ meet the continued medical eligibility criteria for the Aged and Disabled Waiver Services Program?

V. APPLICABLE POLICY:

WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*
- D-2 PAS dated 12/20/05
- D-3 Termination/Denial Letter dated 02/13/06
- D-4 Additional medical information received from [REDACTED]
- D-5 Potential Denial Letter dated 12/23/05
- D-6 Request for Hearing received by Bureau for Medical Services on 02/21/06
- D-7 Miscellaneous Hearing Documents

Claimants' Exhibits:

- C-1 [REDACTED] Circuit Court Order Civil Action No: 06-F-70 "Change of Name"

VII. FINDINGS OF FACT:

1) This issue involves the denial of continued services under the Aged and Disabled Waiver Services Program. The re-evaluation assessment was completed on December 20, 2005, for Mr. _____. Mr. _____ presented verification of his name change from "_____" to "_____" Exhibit (C-1). Those present during the assessment were: Mr. _____; Ms. [REDACTED], Homemaker; and Ms. [REDACTED], RN of the West Virginia Medical Institute (Exhibit D-2).

Ms. [REDACTED] determined through her evaluation that Mr. _____ only had four of the five required deficits to continue Waiver Services. The deficits were in the areas of: Eating; Bathing; Grooming; and Dressing. It should be noted that the evaluation was based only on Mr. _____'s functional levels on the day of the visit.

2) The West Virginia Medical Institute issued a Potential Denial Letter to Mr. _____ on December 23, 2005 (Exhibit D-5). According to the letter, Mr. _____ had deficiencies in 4 areas: Eating; Bathing; Grooming; and Dressing. Mr. _____ was given two weeks to provide any additional medical documentation for reconsideration.

3) Mr. _____ submitted medical documentation from [REDACTED], Inc. The information was received by WVMi on December 29, 2005 (Exhibit D-4).

4) Ms. [REDACTED], RN reviewed the information, and determined that no additional changes to the PAS were required.

5) Ms. _____ requested a fair hearing, and it was received by the Bureau for Medical Services on February 21, 2006 (Exhibit D-6).

6) Ms. Kay Ikerd, RN reviewed the ADW Policy (Exhibit D-1). There were no questions from the participants regarding the policy. A new policy went into effect November 1, 2005 that addressed how certain areas of the PAS would be evaluated.

7) Ms. [REDACTED], RN reviewed the PAS assessed on December 20, 2005. There were no questions from the participants.

8) Mr. [REDACTED] disagreed with the lack of a deficit for Medication Administration. Mr. _____ has a prescription for Desquam-E, a topical ointment for acne on his back. He is unable to apply the ointment himself and must depend on others for assistance. Mr. _____ also has a prescription for Vigamox Eye Drops that must be applied daily. Mr. _____ is unable to apply the drops and must depend on others for assistance. The prescription for the eye drops was dated August 27, 2005. **Ms. [REDACTED] testified that she was unaware of the eye drops and she would have given a deficit if known. This is credible testimony and Mr. _____ will receive one additional deficit for Medication Administration.**

9) Aged/Disabled Home and Community Based Services Manual § 570 PROGRAM
ELIGIBILITY FOR CLIENT:

Applicants for the ADW 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 ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

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 ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term service 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 2005 to qualify medically for the ADW 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 persons 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 (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations. (Item 26 on the PAS 2005)
- E. 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 some one other than the recipient at all times.

VIII. CONCLUSIONS OF LAW:

The Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria states in part, "An individual must have five deficits on the PAS to qualify medically for the ADW Program."

The testimony and medical documentation indicates Mr. _____ will receive an additional deficit for Medication Administration, and increases the total deficits to five. Mr. _____ continues to be eligible for services under the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of this State Hearing Officer to REVERSE the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of July, 2006.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**