



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

August 22, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 15, 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 December 29, 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
CCS

WVMI
Brown – Legal Aid of WV
Kalwar – Attorney General BMS

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

_____ **Claimant,**

v.

Action Number: 06-BOR-1262

**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 August 15, 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 August 15, 2006 on a timely appeal filed March 30, 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
Nan Brown – Attorney Legal Aid of WV
[REDACTED] – Case Manager Catholic Community Service
[REDACTED] – Homemaker Brooke County Committee on Aging
_____ – Claimant’s Daughter

Department’s Witnesses:

Kay Ikerd – Nurse Bureau of Senior Services by phone
Nasir Kalwar – Attorney with Attorney General’s Office Bureau of Medical Services by phone
[REDACTED] - 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 December 29, 2005
- D-3 Notice of potential denial dated January 5, 2006
- D-4 Notice of termination dated February 7, 2006
- D-5 Letter from [REDACTED], MD dated January 19, 2006

Claimant’s Exhibits:

- C-1 Letter from [REDACTED], MD dated August 14, 2006

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 78 year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on December 29, 2005.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant’s home with the claimant and homemaker participating. The homemaker did not participate during the entire assessment. Left during the assessment. The evaluating nurse determined that the claimant had only three (3) qualifying deficits.

She assigned a deficit for Ms. _____'s need for physical assistance in bathing, grooming and dressing.

- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was Chronic Obstructive Pulmonary Disease and Diabetes.
- 4) Claimant's attorney contends that Ms. _____ should have been awarded deficits for continence, walking, medication administration and inability to vacate a building.
- 5) Claimant's homemaker provides services 5 days per week, 4 hours per day.
- 6) The Pre-Admission Screening form page 2 of 4 section 25e (D2) indicates that claimant was assessed as a level 2 Less than Total Incontinence. Evaluating nurse made this assessment based on claimant's statement that she wears pads for leakage of urine that occurs daily. Claimant advised nurse that the pads only get damp. Indicated that she is aware of the need to void and gets up at night to do so. There was no testimony offered to indicate claimant is totally incontinent.
- 7) The Pre-Admission Screening form page 2 of 4 section 25j (D2) indicates that claimant was assessed as a level 2 Supervised/Assistive Device in the area of Walking. Evaluating nurse made this assessment based on claimant's demonstrated ability to walk on her own using furniture and walls during the assessment. Testimony received from claimant's homemaker indicates that claimant has to hold onto something at all times when walking. Homemaker indicates claimant is very unsteady on her feet and that at times she does give claimant assistance to walk. Claimant's daughter also offered testimony that she also provides assistance in walking to her mother when she comes to the home.
- 8) The Pre-Admission Screening form page 2 of 4 section 27 (D2) indicates that the claimant was capable of administering her own medications. Evaluating nurse made this assessment based on claimant's statement that she takes pills from pre-filled pill box and places them into her own mouth. Claimant also advised evaluating nurse that she places eye drops into her eyes by herself. Claimant's homemaker affirmed that the pharmacy fills claimant's pill box for her. The homemaker also indicated that she dumps pills into a cup for the claimant to take. Claimant is required to take insulin injections via a Novolin tube and administers these injections herself. This tube has a dial on it that must be utilized to measure out the level of insulin to be administered. Claimant's homemaker checks to be sure the dosage is correct as claimant's medically documented vision problems make it impossible for her to see the dial. Claimant also requires assistance in performing blood testing as vision problems make it impossible for her to place blood drops onto testing strips and to read the subsequent results that appear on her glucose meter.
- 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.

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 three (3) qualifying deficits in the areas of bathing, grooming and dressing.
- 2) The issues raised at the hearing were in the areas of Contenance, Walking, Medication Administration and Ability to Vacate a Building.
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on December 29, 2005.
- 4) Evidence and testimony admitted during this hearing confirm that the assessment of a level 2 Less than Total Incontinence was appropriately assigned by the evaluating nurse.
- 5) Evidence and testimony admitted during this hearing reveal that in the contested area of Walking that claimant does meet the level 3 One Person Assist definition and should be awarded a deficit. Testimony from both the homemaker and daughter makes it clear that claimant does require assistance **at times** in walking. Policy does not indicate that a one person assist is required at all times for walking to receive a deficit.
- 6) Evidence and testimony admitted during this hearing confirm that the nurse's assessment of claimant's ability to administer her own medication is accurate. Claimant's statement during the assessment that she takes and places medication into her own mouth and eyes herself was not contested during this hearing. Claimant does administer her own insulin injections. Her need for assistance to assure the insulin dosage is accurate is not considered within the policy governing medication administration.

- 7) 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 **at all times**. As noted in #6 above, claimant was awarded a level 3 one person assist for walking based on her need for assistance **at times**. She does not require a one person assist in walking at all times therefore she cannot receive a deficit in the area of Ability to Vacate a Building. Claimant's orientation was not under dispute in this hearing.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, the Hearing Officer finds that the evaluating nurse assessed the claimant with three (3) deficits in the areas of Bathing, Dressing and Grooming. In addition, testimony and evidence admitted during this hearing reveal that one additional deficit should be awarded for walking. This results in a total deficit award of four (4) deficits. Policy requires five (5) deficits to be eligible for the Aged/Disabled Waiver Program. The department's proposed action to terminate services through the Aged/Disabled Waiver Program is upheld.

X. The RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of August 2006.

**Melissa Hastings
State Hearing Officer**