



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

August 16, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 16, 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], Case Manager - CWVAS, Inc.

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

_____,

Claimant,

v.

Action Number: 06-BOR-1344

**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 August 16, 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 originally scheduled for July 26, 2006 on a timely appeal filed March 9, 2006. The State Hearing Officer rescheduled the hearing for August 16, 2006.

It should be noted here that Ms. _____ was receiving benefits at the time of the hearing. A pre-hearing conference was not held between the parties, and Ms. _____ 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:

_____, Claimant
_____, Friend/Medical Power of Attorney
_____, Case Manager – Central West Virginia Aging Services, Inc.
_____, RN – Kelly Health Care
_____, Home Health Aide – Kelly Home Care
Kay Ikerd, RN – Bureau of Senior Services (BoSS)
_____, RN – West Virginia Medical Institute (WVMI)

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 Ms. _____ 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 01/19/06
- D-3 Termination/Denial Letter dated 02/23/06
- D-4 Additional Medical Documentation received 02/07/06
- D-5 Potential Denial Letter dated 01/25/06
- D-6 Request for Hearing received by Bureau of Senior Services on 03/09/06
- D-7 Miscellaneous Hearing Documents

Claimants' Exhibits:

None

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 January 19, 2006, for Ms. _____. The primary diagnoses were COPD with Exacerbation; HCVD; DM; and CAD/C with MI. Those present during the assessment were Ms. _____, Home Health Aide; Ms. _____, Case Manager; Ms. _____, RN Supervisor –

WVMI; and Ms. [REDACTED] RN of the West Virginia Medical Institute. It should be noted that the evaluation was based only on Ms. [REDACTED]'s functional levels on the day of the visit (Exhibit D-2).

Ms. [REDACTED] initially determined through her evaluation that Ms. [REDACTED] had the required deficits to continue Waiver Services. Ms. [REDACTED] changed the ratings for Walking and Transferring after a discussion with her Supervisor, Ms. [REDACTED]. Ms. [REDACTED] notified all parties of the changes, and comments were received from Ms. [REDACTED], her physician, and Ms. [REDACTED].

2) The West Virginia Medical Institute issued a Potential Denial Letter to Ms. [REDACTED] on January 25, 2006 (Exhibit D-5). According to the letter, Ms. [REDACTED] had deficiencies in 4 areas: Eating; Bathing; Grooming; and Dressing. Ms. [REDACTED] was given two weeks to provide any additional medical documentation for reconsideration.

3) On February 7, 2006, Ms. [REDACTED] submitted additional documentation by fax transmission to Ms. [REDACTED], RN for review (Exhibit D-4). On February 23, 2006 the WVMI issued a Termination/Denial Letter (Exhibit D-3).

4) Ms. [REDACTED] requested a fair hearing, and it was received by the Bureau of Senior Services on March 9, 2006 (Exhibit D-6).

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

6) Ms. [REDACTED], RN reviewed the PAS assessed on January 19, 2006 (Exhibit D-2). There were no questions from the participants.

7) The areas of dispute were: Walking; Transferring; and Vacating.

On the day of the assessment, Ms. [REDACTED] RN rated Ms. [REDACTED] as a Level 3 in Walking (one person assist in the home), and Level 3 in Transferring (one person or two persons assist in the home). All present during the hearing were in agreement with the ratings. According to Ms. [REDACTED] Overall Nurses Notes, she changed the ratings in these areas after a discussion with her Supervisor, Ms. [REDACTED], RN. Ms. [REDACTED] did not attend the hearing. The hearsay rule was explained to all parties when Ms. [REDACTED] referred to statements made by Ms. [REDACTED]. The Claimant's representatives objected to the references and they will not be considered as a part of this decision.

The testimony provided by the participants supports Ms. [REDACTED]'s initial assessment ratings for Walking and Transferring. Since Ms. [REDACTED] will receive a Level 3 in Walking, she will qualify for an additional deficit for Vacating the Building

8) The additional deficits awarded for Walking; Transferring; and Vacating will increase the total deficits from four to seven. Ms. [REDACTED] will have a total of five (5) additional points (2 points for Walking; 2 points for Transferring; and 1 point for Vacating) added to her total level of care points. Ms. [REDACTED] remains eligible for the Aged and Disabled Waiver program.

**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 provided by the participants supports Ms. _____’s initial assessment ratings for Walking and Transferring. Since Ms. _____ will receive a Level 3 in Walking, she will qualify _____ for an additional deficit for Vacating the Building

The additional deficits awarded for Walking; Transferring; and Vacating will increase the total deficits from four to seven. Ms. _____ will have a total of five (5) additional points (2 points for Walking; 2 points for Transferring; and 1 point for Vacating) added to her total level of care points. Ms. _____ remains eligible for 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 16th Day of August, 2006.

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