



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 18, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 29, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Aged/Disabled (HCB) Title XIX Waiver Services 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 Aged/Disabled Waiver 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 a 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 Section 570]

The information submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits under the Aged/Disabled Waiver Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Health Consultants Plus

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

_____,
Claimant,

v.

Action Number: 06-BOR-1388

**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 18, 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 June 29, 2006 on a timely appeal filed March 3, 2006.

It should be noted that benefits and services have continued pending the 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 Daughter/Homemaker
_____, RN, American Homecare
_____, American Homecare, Office Manager
_____, RN, CM, Health Consultants Plus
_____, RN, WVMi (participated telephonically)
Cathie Zuspan, RN, BoSS (participated telephonically)
Mary Sansalone, Esq., State Hearing Officer, Observing

Presiding at the hearing was Thomas E. Arnett, 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 Agency is correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Sections 570 and 500
- D-2 Pre-Admission Screening (PAS) assessment completed on January 6, 2006
- D-3 Notice of Potential Denial dated January 20, 2006
- D-3a Correspondence dated January 24, 2006 from _____, RN.
- D-3b Correspondence from Dr. _____ dated January 26, 2006.
- D-4 Notice of Termination/Denial dated February 23, 2006

VII. FINDINGS OF FACT:

- 1) On January 6, 2006, the Claimant was reevaluated (medically assessed) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program, and to confirm the appropriate Level of Care.
- 2) The medical assessment (exhibit D-2) completed by WVMi determined that the Claimant is no longer medically eligible to participate in the ADW Program.

- 3) On January 20, 2006, a notice of Potential Denial (exhibit D-3), was sent to the Claimant. This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations. Based on your PAS you have deficiencies in only 3 areas – Bathing, Grooming and Dressing.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

The Claimant was notified that he could provide additional information regarding his medical condition within the next 2-weeks for consideration before a final decision was made. Additional medical information was received and has been identified as exhibits D-3a & D-3b. WVMi reviewed the additional information and was unable to award the Claimant any additional deficits.

- 4) A termination notice (exhibit D-4) was sent to the Claimant on February 23, 2006. This notice states:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate / deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 3 areas – Bathing, Grooming and Dressing

- 5) The Claimant's representatives contend that the Claimant should have been awarded a deficit in eating, medication administration and vacating a building in the event of an emergency.
- 6) Evidence received at the hearing confirms that the Claimant has a diagnosis of dysphasia (see Exhibit D-2 and D-3b) and Dr. [REDACTED] indicates that the Claimant has such a difficult time swallowing that his pills must be dipped in butter. Credible testimony received at the hearing indicates that the Claimant has difficulty cutting his food and that most of his food (meat and veggies) must be put through a grinder. The evidence indicates that the Claimant requires physical assistance with eating (special meal preparation and assistance with cutting food). An additional deficit (level-2) is awarded in eating.

- 7) Testimony and documentation received in support of a deficit in medication administration reveals that upon the advice of the Claimant's physician, the Claimant's daughter must occasionally apply Neosporin and bandages to his legs for a skin condition and she must soak his feet in vinegar. The Claimant's medication (pills) must be removed from the container and placed in butter, however, the Claimant retrieves the pills and takes them himself. In addition, the evidence reveals that the Claimant needs physical assistance administering prescription ear drops.

The over-the-counter ointment and non-sterile bandages, as well as vinegar soaks, clearly do not qualify under medication administration, however, the amount of assistance the Claimant must receive otherwise (medications removed from containers and placed in a bowl with butter and ear drops put in his ears) would appear to constitute more than prompting and supervision. Policy, as argued by the Department, indicates that because the Claimant physically retrieves the "battered" medication from the bowl and places them in his mouth (medication is not placed in the hand or mouth), and ear drops are not included in the list of medications for which an individual can receive assistance, the Claimant does not qualify for a deficit in the area of administering medications. In accordance with existing policy, a deficit cannot be awarded in medication administration.

- 8) The Claimant's representatives contend that a deficit should be awarded in vacating the building in the event of an emergency due to his intermittent disorientation. Policy states that an individual is mentally incapable of leaving the building if orientation is a Level 3 or higher (totally disoriented, comatose) with a diagnosis of dementia, Alzheimers, or related condition. Because the evidence indicates that the Claimant has been appropriately assigned a level-2 in orientation (intermittent), and he does not meet other criteria that could be considered, the Claimant does not qualify for a deficit in vacating the building in the event of an emergency.
- 9) Aged/Disabled Home and Community-Based Services Manual Section 570 - 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) A medical assessment was completed on the Claimant to determine continued medical eligibility for participation in the Aged/Disabled Waiver Program on January 6, 2006.

- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 3) WVMI's review of the medical assessment and the additional medical information reveals that the Claimant demonstrates three (3) program qualifying deficits – Bathing, Grooming and Dressing.
- 4) Evidence submitted at the hearing identifies one (1) additional deficit – Eating.
- 5) Whereas the Claimant demonstrates deficits in four (4) of the specific categories of nursing services, the Claimant's continued medical eligibility for participation in the Aged & Disabled Waiver Services Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 18th day of August, 2006.

Thomas E. Arnett
State Hearing Officer