



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 31, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 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]

Information submitted at your hearing revealed that you meet medical eligibility requirements for the Aged/Disabled Waiver Program.

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

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CWVAS

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

_____,
Claimant,

v.

Action Number: 06-BOR-1991

**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 31, 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 29, 2006 on a timely appeal filed May 25, 2006.

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:

_____, friend of Claimant
_____, Social Worker, Hospice Care Corporation
_____, RN, Hospice Care Corporation
_____, Social Worker, Hospice Care Corporation
_____, RN, CWVAS
_____, Executive Director, CWVAS
_____, Case Manager, CWVAS
_____, wife of Claimant (participating telephonically)
Brian Holstein, Licensed Social Worker, BoSS (participating telephonically)
_____, RN, WVMI (participating telephonically)
Jennifer Sutherland, Licensed Social Worker, BoSS (observing)

Presiding at the hearing was Pamela L. Hinzman, 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 Section 570
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on March 27, 2006
- D-3 Notice of Potential Denial dated April 10, 2006 with additional information
- D-4 Notice of Denial dated May 17, 2006

Claimant's Exhibits:

- C-1 Letter from Dr. _____ dated April 12, 2006

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing a reevaluation to determine continued medical eligibility.
- 2) West Virginia Medical Institute completed a medical assessment (D-2) on March 27, 2006 and determined that the Claimant is not medically eligible to participate in the ADW Program.

- 3) The Claimant was notified of the potential denial (D-3) on April 10, 2006 and advised that he had two weeks to submit additional medical information. Additional information was submitted and reviewed, however, the information did not change the PAS findings.
- 4) On May 17, 2006, a denial notice (D-4) was sent to the Claimant.
- 5) Ms. [REDACTED] reviewed the PAS 2005 (D-2) and testified that four (4) deficits were established for the Claimant in the areas of physical assistance with eating, bathing, dressing and grooming.
- 6) The Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Medication Administration- Mrs. _____ testified that her husband is unable to open pill bottles and that she places a cup containing pills into her husband's hand. She testified that her husband frequently drops the pills and is unable to retrieve them. When this occurs, Mrs. _____ stated that she normally picks up the pills and places them in her husband's mouth. _____ testified that he has witnessed the Claimant dropping medications and Ms. [REDACTED] explained that the Claimant has no feeling in his fingers as a result of scleroderma.

A letter from Dr. [REDACTED] (C-1), which was submitted to WVMI as additional information on April 20, 2006 (D-3) states:

Mr. _____ can not give his medication independently because of the severe involvement of scleroderma in the fingers of his hands with ulceration and loss of sensation.

Ms. [REDACTED] said she was told on the date of the assessment that Mrs. _____ places the Claimant's medication in a pill cup and he takes them out of the cup.

Because the Claimant's scleroderma causes a lack of finger sensation and he drops pills frequently, testimony is credible that he is unable to administer his own medication. Mrs. _____ testified that she places medication into her husband's hand via pill cup or puts pills directly into his mouth when he drops the medicine. ADW policy specifies that medication must be placed in the Claimant's hand or mouth at all times. Policy does not specify that medications must be placed directly into the palm of the Claimant's hand as opposed to being placed into the hand in a pill cup. Therefore, one (1) additional deficit is awarded for inability to administer medication.

Incontinence of bowel- Mrs. _____ testified that her husband is incontinent of bowel and must be changed several times per day. She stated that her husband often does not make it to the toilet and that she has discovered fecal matter on the floor and wall. However, she indicated that the Claimant does not have bowel accidents at all

times. The letter from Dr. [REDACTED] states that the Claimant's advanced systemic scleroderma has caused malabsorption syndrome.

While the Claimant unquestionably suffers from bowel problems as a result of his medical condition, testimony indicates that he is not incontinent of bowel at all times. Therefore, the Claimant has been correctly rated on the PAS as being less than totally incontinent and no additional deficit is awarded in this area.

Inability to vacate in the event of an emergency- Mrs. _____ testified that her husband could not vacate the residence in the event of an emergency because he cannot go down the outside steps. Witnesses also testified that the Claimant's bedroom is small and he is able to walk through the bedroom unassisted only because of the furniture arrangement. They indicated that Mr. _____ could not vacate without assistance. Mrs. _____ testified that her husband normally ambulates using a walker or cane.

Mr. Holstein stated that the Claimant must be rated as Level 3 or higher in walking (one-person assistance) or Level 3 in orientation (totally disoriented) to receive a deficit for vacating. The Claimant was rated as a Level 2 (supervised/assistive device) in walking on the PAS and a Level 1 (oriented) under orientation. Therefore, no additional deficit can be awarded for vacating.

- 7) 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.

- 8) 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.

- 9) 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) Policy clearly specifies that an individual must be awarded five (5) deficits on the PAS 2005 in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received four (4) deficits on the PAS completed by Ms. [REDACTED] in conjunction with his annual medical reevaluation.
- 3) As a result of testimony presented during the hearing, one (1) additional deficit is awarded for inability to administer medication.
- 4) The addition of one (1) deficit brings the Claimant's total number of deficits to five (5). Therefore, the Claimant continues to meet medical eligibility requirements for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 31st day of August, 2006.

**Pamela L. Hinzman
State Hearing Officer**