



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

September 19, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 7, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to deny 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 March 6, 2006 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 deny 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 WVM
BOSS

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

_____ **Claimant,**

Action Number: 06-BOR-2146

**v.
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 September 7, 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 September 7, 2006 on a timely appeal filed July 25, 2006.

It should be noted here that the claimant's benefits have been denied 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 by phone

Department's Witnesses:

Libby Boggess– Nurse Bureau of Senior Services 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 deny 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 March 6, 2006
- D-3** Notice of potential denial dated March 22, 2006
- D-4** Notice of denial dated April 7, 2006

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1)** _____ is a 71 year-old female. She is an applicant for the A/DW program. Ms. _____'s A/DW eligibility was undergoing an initial evaluation on March 6, 2006.
- 2)** A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant and her sister. The evaluating nurse determined that the claimant had only four (4) qualifying deficits. She assigned a deficit for claimant's need for physical assistance in bathing, grooming, dressing and continence.
- 3)** The primary diagnosis listed on the Pre-Admission Screening (D2) was Osteoarthritis.

- 4) All deficit related areas were explored with the claimant during the hearing since she had no representation.
- 5) The Pre-Admission screening form page 2 of 6 section 24 (D2) indicates there was no decubitus present at the time of the assessment. Claimant denies any type of bedsore.
- 6) The Pre-Admission screening form page 2 of 6 section 25a (D2) indicates that claimant was assessed as a level 1 Self/ Prompting in the area of eating. Claimant states that she is able to feed herself.
- 7) The Pre-Admission screening form page 2 of 6 section 25g (D2) indicates that claimant was assessed as a level 1 Oriented. Claimant indicates that she always knows who she is and where she is.
- 8) The Pre-Admission Screening form page 2 of 6 item 25h (D2) indicates that claimant was assessed as a level 2 Supervised/Assistive Device in the area of transferring. Claimant states that she is capable of getting up and down on her own but that it takes time and is not easy for her. Utilizes a walker or cane to assist her in transferring.
- 9) The Pre-Admission Screening form page 2 of 6 section 25i (D2) indicates that claimant was assessed as a level 2 Supervised/Assistive Device in the area of walking. Claimant indicates that while in her home she utilizes a walker and cane to assist her in walking.
- 10) The Pre-Admission Screening form page 2 of 6 section 25j (D2) indicates that claimant was assessed as a level 1 No Wheelchair. Claimant indicates that she does not have a wheelchair at present.
- 11) The Pre-Admission Screening form page 2 of 6 section 27 (D2) indicates that claimant is capable of administering her own medications. Claimant indicates that she does place her medications into a container and takes them herself without any help from others. She did indicate that she was receiving assistance from a neighbor in administering eye drops. These eye drops were prescribed following recent cataract surgery and are a temporary medication.
- 12) Claimant's main area of concern and disagreement with the agency's decision was in the area of vacating a building. Claimant indicates that she would be unable to vacate her building in case of an emergency as she cannot negotiate steps with her walker or cane. Elevators are not in service during an emergency therefore she feels she would not be able to vacate the building.
- 13) 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.

14) 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.

15) 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 four (4) qualifying deficits in the areas of bathing, grooming, dressing and continence.
- 2) The issues raised at the hearing were in the areas of decubitus, eating, orientation, transferring, walking, wheeling, medication administration and vacating the building.
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on March 6, 2006.
- 4) Evidence and testimony admitted during this hearing reveal that in the contested area of decubitus the evaluating nurse properly determined that claimant had no decubitus present.
- 5) Evidence and testimony admitted during this hearing confirm that the assessment of a level 1 Self/Prompting for eating was appropriately assigned by the evaluating nurse.
- 6) Evidence and testimony admitted during this hearing confirm that the assessment of a level 1 Oriented in the area of Orientation was appropriately assigned by the evaluating nurse.
- 7) Evidence and testimony admitted during this hearing confirm that the assessment of a level 2 Supervised/Assistive Device in the area of transferring was appropriately assigned by the evaluating nurse.
- 8) Evidence and testimony admitted during this hearing confirm that the assessment of a level 2 Supervised/Assistive Device in the area of walking was appropriately assigned by the evaluating nurse.

- 9) Evidence and testimony admitted during this hearing confirm that the evaluating nurse properly evaluated claimant's ability to administer her own medications. To receive a deficit in this category a claimant must require assistance **at all times** in administering medications. Claimant's testimony indicates that she currently requires assistance from a neighbor to administer eye drops but is capable of taking the rest of her oral medications herself.
- 10) 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. As noted in items six (6) and eight (8) above claimant was properly assessed as a level 1 oriented and level 2 supportive/assistive device in walking.

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 four (4) deficits in the areas of bathing, grooming, dressing and continence appropriately. There were no other deficits established as a result of this hearing. Policy requires five (5) deficits to be eligible for services under the Aged/Disabled Waiver Program. The department's proposed action to deny services through the Aged/Disabled Policy is upheld.

X. The RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th Day of September 2006.

Melissa Hastings
State Hearing Officer