



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 19, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 12, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services received through the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver 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.

The Aged /Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to 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. [Aged/Disabled (HCB) Services Manual 570-570.1b (11/1/03)].

The information which was submitted at your hearing reveals that your medical condition continues to require 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 **reverse** the Department's proposal to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
WVMI
BoSS
CCIL
Charles Rogers, Esq., Legal Aid of WV
Kelly Ambrose, Esq., BMS, Assistant AG's Office

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

_____,

Claimant,

v.

Action Number: 05-BOR-4597

**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 January 19, 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 originally scheduled to convene on April 11, 2005, July 25, 2005 but was convened on January 12, 2006 on a timely appeal filed January 14, 2005.

It should be noted here that the Claimant's benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending a hearing decision. It should also be noted that the Department completed a second medical evaluation subsequent to the Claimant's original appeal. This hearing only addresses the findings from the current evaluation completed on October 25, 2005.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) 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
Charles Rogers, Esq., Legal Aid of WV, Counsel for the Claimant
_____, Friend/MPOA
_____, Homemaker
_____, RN, CM, CCIL
_____, Homemaker RN, _____ Committee on Aging
_____, Friend/neighbor
Kelly Ambrose, Esq, BMS, Counsel for the Department
_____, RN, WVMi (by phone)
Kay Ikerd, RN, BoSS (by phone)

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 to be decided is whether the Claimant continues to be medically eligible for benefits and services through the Medicaid, Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 560 & 570.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
- D-2 Medical Assessment, PAS-2000, completed on October 25, 2005
- D-3 Notice of Potential Denial dated November 2, 2005
- D-4 Notice of Termination/Denial dated November 2, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant was originally evaluated for continued participation in the Aged & Disabled Waiver Program, hereinafter ADW, on November 12, 2004. An appeal was subsequently filed on January 14, 2005 to contest the findings of West Virginia Medical Institute, hereinafter WVMi, as the determination was made that the Claimant was no longer medically eligible to participate in the ADW Program.

- 2) A hearing to address the Claimant's appeal was scheduled for April 11, 2005 and again on July 25, 2005, however, a continuance was granted to the Claimant and the Department respectively. Following the July 25, 2005 continuance, the Department reevaluated the Claimant's medical eligibility.
- 3) The current medical evaluation was completed by [REDACTED] RN, WVMI on October 25, 2005 (exhibit D-2). The evaluation resulted in an unfavorable finding for the Claimant, and on November 2, 2005, a Potential/Denial notice 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.

While this notice allows the recipient 2 weeks to submit additional medical information before a final decision is made, the Department indicated that no additional information was received.

- 4) A Termination/Denial notice (exhibit D-4) was sent to the Claimant on November 29, 2005. This notice includes some of the following pertinent information:

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 is contesting findings on the PAS, specific to medical eligibility, in the areas of vacating the building, eating, bladder incontinence and transferring.
- 6) There is insufficient evidence to establish a deficit in bladder incontinence. Testimony received at the hearing is consistent with evidence found on the PAS - The Claimant experiences bladder incontinence 2 to 3 times per month. A deficit cannot be awarded in the area of continence.

- 7) Testimony received in support of a deficit in transferring is consistent with the documentation found on the PAS. The Claimant's transferring ability has been correctly identified as level 2 - transfers with supervision / assistive device. It should be noted, however, that while the Claimant refuses to allow anyone to assist her in transferring, the Claimant experiences a great deal of pain and discomfort when transferring and ambulating. As a result, the Claimant requires a considerable amount of time to complete mobility tasks.
- 8) Evidence received in support a deficit in vacating a building includes testimony that only one of two exits in the Claimant's mobile home can be used. While the Department questioned the relevance of discussing residential floor plans, the Claimant's physical environment must be considered when determining her ability to vacate in the event of an emergency. Because the Claimant is unable to use the front exit in her home and transferring and ambulation is slow and time-consuming, the Claimant is physically unable to vacate the building in the event of an emergency. A deficit in vacating is therefore awarded (+1).
- 9) Documentation reveals that the Claimant is on a special diet and she cannot eat spices, seeds or roughage. She reportedly gets "strangled" or choked on certain kinds of meats and crackers. Credible testimony received on behalf of the Claimant indicates that the Claimant's food is typically pre-prepared by the homemaker and cut in to small bites. The Claimant is not capable of opening a jar as reported in the PAS, and she cannot cut her own food up. Based on these findings, a deficit in eating is therefore established (+1).
- 10) 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:

C. Be approved as medically eligible for NF level of care.
- 11) 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.

12) Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. # 24: Decubitus - Stage 3 or 4
- B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
- C. #26: Functional abilities of individual in the home.
 - 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 incontinent)
 - 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 or two 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. #27: 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.
- E. #28: The individual is not (c) capable of administering his/her own medications.

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 October 25, 2005.
- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.

- 3) The medical assessment completed by WVMI reveals that the Claimant demonstrates three (3) program qualifying deficits – bathing, grooming and dressing.
- 4) Evidence submitted at the hearing identified two (2) additional deficits – vacating a building and eating.
- 5) Whereas the Claimant exhibits deficits in five (5) of the specific categories of nursing services, the Claimant’s continued medical eligibility for participation in the Aged & Disabled Waiver Services Program is therefore established.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your 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 19th Day of January, 2006.

**Thomas E. Arnett
State Hearing Officer**