



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 13, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 1, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under 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 submitted at your hearing revealed 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 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

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

_____,

Claimant,

v.

Action Number: 05-BOR-5654

**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 13, 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 for November 14, 2005 but was rescheduled and convened on December 1, 2005 on a timely appeal, filed May 6, 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.

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:

██████████ RN, CM, CCIL
██████████ RN, WVMI
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 services under the 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 3/17/05
- D-3 Notice of Potential Denial from WVMI dated 3/31/05
- D-3a Correspondence from ██████████, received on 4/12/05
- D-3b Correspondence from ██████████ MD
- D-4 Notice of Termination/Denial dated 4/26/05

VII. FINDINGS OF FACT:

- 1) On March 17, 2005, the Claimant was reevaluated (medically assessed) by West Virginia Medical Institute, hereinafter WVMI, to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW.
- 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. On March 31, 2005, 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 – vacating, bathing and dressing.

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

- 3) On April 12, 2005, additional medical information was received by WVMi and has been identified as exhibits D-3a and D-3b. This information was received within the allowable 2-week time period and was considered in the Claimant's eligibility determination.
- 4) A Termination Notice (exhibit D-4) was sent to the Claimant on April 26, 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 – vacating a building, bathing and dressing.

- 5) The contested findings on the PAS, as identified in exhibit D-3a and by the Claimant's representative, include orientation, grooming, bladder incontinence, and medication administration. While the Claimant's physician stated in exhibit D-3a that the Claimant exhibits "significant deficits" in the areas he identified, without an explanation of what "significant" means and how it applies to applicable policy, an eligibility determination cannot be made based solely on this statement.
- 6) Testimony presented in support of a deficit in orientation was consistent with documentation found on the medical assessment. The Claimant experiences occasional episodes of memory loss and has been appropriately assessed as intermittent disorientation. In order for an individual to qualify for a deficit in orientation, an individual must always be disorientated (x3) - to person, place and time.
- 7) The Claimant's ability to groom herself independently was contested as Ms. [REDACTED] indicated that she cannot raise her arm to comb her hair. Documentation included in the medical assessment states that the Claimant can wash her hair independently in the bathroom sink and "caregiver reported that the client likes for her to do her hair for her." It should also be noted that the Claimant can perform all other grooming activities – clipping nails and oral hygiene. Because the Claimant's representative was not present at the assessment, her testimony cannot be given the same evidentiary credibility as the documentation by the WVMi RN who completed the assessment. Based on this ruling, there is insufficient evidence to establish a deficit in grooming.

8) Documentation in the medical assessment reveals that the Claimant wears protective pads to care for what the Department identified as stress incontinence. The incontinence pads are changed daily by the Claimant but they are reportedly not always wet. However, the frequency of incontinence accidents was not adequately explored or documented by the Department. Because the Claimant wears protective pads for episodes of daily incontinence, whether caused by stress or otherwise, the episodes appear to occur more than three (3) times a week. For this reason, a deficit is awarded in bladder incontinence (+1).

9) Evidence reviewed for consideration of a deficit in medication administration reveals that the Claimant has been accurately assessed in this area of functionality. While there was no evidence submitted to support claims that the Claimant has previously been hospitalized for taking incorrect doses, documentation found in the medical assessment confirms that the Claimant requires prompting and supervision. This finding is consistent with an individual who is physically capable of administering her own medications but has intermittent disorientation. Prompting and supervision in medication administration does not qualify as a functional deficit.

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 (5) 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 March 17, 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 demonstrated three (3) program qualifying deficits – vacating a building, bathing and dressing.
- 4) The evidence submitted on behalf of the Claimant establishes one (1) additional deficit – the Claimant is incontinent of bladder.
- 5) Whereas the Claimant exhibits 4-deficits in the specific categories of nursing services at the time of the March 17, 2005 assessment, 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 proposal of the Agency 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 13th Day of January, 2006.

**Thomas E. Arnett
State Hearing Officer**