



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 6, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 20, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) 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 Home and Community Based Services Waiver (ADW) Program is based on current policy and regulations. Some of these regulations state as follows: An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of assessment elements on the PAS. (Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003)

The information which was submitted at your hearing revealed that you do meet the medical criteria for the ADW Program.

It is the decision of the State Hearing Officer to reverse the proposal of the Department to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Libby Boggess, BoSS
[REDACTED], WVMI
All Care Home & Community Services, Inc.

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

_____,

Claimant,

v.

Action Number: 05-BOR-6370

**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 December 20, 2005 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 December 20, 2005 on a timely appeal, filed July 28, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

_____, Claimant
_____, CM, All Care Home & Community Services, Inc.
_____, Caregiver
_____, Claimant's Daughter
Brian Holstine, LSW, BoSS (By Telephone)
_____, RN, WVMI (By Telephone)

Presiding at the hearing was Margaret M. Mann, 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 claimant continues to meet the medical requirements needed to receive ADW services.

V. APPLICABLE POLICY:

Sections 570, 570.1, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Sections 570, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003
- D-2 PAS-2000 dated 06/08/2005
- D-3 Potential Denial Letter dated 06/16/2005
- D-4 Termination Notice dated 07/06/2005

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of ADW services.
- 2) A review of medical eligibility was completed on 06/08/2005. Two deficits were found. The deficits found were physical assistance with dressing and physically unable to vacate in the event of an emergency. (D-2)
- 3) The claimant was notified of potential case closure in a letter dated 06/16/2005. (D-3) A letter of termination was issued 07/06/2005. (D-4) The claimant requested a hearing on this issue.
- 4) Testimony from the claimant revealed she disagrees with the findings for bladder continence, bathing and grooming.

- 5) The health assessment on the PAS review (D-2) reads PMH-renal failure, osteoarthritis, DVT, glaucoma. The overall comments on the PAS review read in part that the claimant stated she is able to feed herself. When it comes to cutting up her foods she stated her hands hurt but she can do this. The claimant stated when it comes to bathing she takes a sponge bath. She notes she is able to gather her water for her bath. When it comes to doing her bath she is able to do this on her own also. When asked if the homemaker has to wash her feet and legs, claimant stated no she has a bath brush she uses for this. She also reported being able to wash her face, chest and private areas. She also reported usually being able to wash her hair herself in the sink. She will use her left hand to comb hair. She reports her homemaker does not help her clip her fingernails. She occasionally has accidents with her bladder once or twice a week. She does not have accidents with her bowels. The homemaker, _____, was not present for the assessment because she was not working as she was on medical leave.
- 6) Testimony from the homemaker, Ms. _____, revealed she is doing the same things for the claimant today as she was prior to the assessment. The claimant cannot get into the tub by herself. She has to sit on the commode in order to wash her arms, face and chest. She cannot get to her shoulders well. She cannot wash her back, legs and feet. She has to stand at the commode in order for the homemaker to wash her private parts. The claimant cannot put her socks on or wash her hair by herself. She basically cannot do anything. She can feed herself but the homemaker cuts her food up for her. Ms. _____ stated she is not allowed to clip nails but she does file them. _____ does not cut her nails.
- 7) Testimony from Ms. _____ revealed that the claimant has not been totally continent of the bladder since she has been working for her. She keeps pads on the beds and the claimant wears pads. She feels it was embarrassment on the part of the claimant for not answering Ms. _____'s questions. She has had to put a rug and pad down at the foot of the bed because when she gets up out of the bed she has no control of the bladder and urine runs into the floor. The bed has to be stripped everyday or every other day. The claimant needs help transferring from the table to the bed at times. There were a couple of homemakers that filled in for Ms. _____. There is no weekend coverage for Ms. _____.
- 8) Testimony from Ms. _____ revealed she was present at the assessment. She had explained to the claimant she was not going to be eligible for the program based on the answers she had given Ms. _____. At that time, Ms. _____ admitted to being nervous. Ms. _____ then admitted she did need help bathing and washing her hair. Ms. _____ felt the answers would have been different if the homemaker would have been present.
- 9) Testimony from Ms. _____ revealed that it was only after the fact when claimant was informed she would not be eligible for the program the claimant said she cannot put on her socks. The PAS was discussed with the claimant. She at first agreed and then changed her mind once _____ informed her she would not qualify for the waiver. The client also noted that her daughter who has Down's Syndrome helps her dress. Client then stated she cannot wash her feet and legs and her homemaker does this for her. The claimant was alert and oriented during the assessment. (D-2)
- 10) Testimony from Ms. _____ revealed she needs assistance in getting dressed.

- 11) Section 570 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

- 12) Section 570.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

- 13) Section 570.1.a of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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 level of care (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.

- 14) Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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)
Contenance - Level 3 or higher (must be incontinent)
Orientation - Level 3 or higher (totally disoriented, comatose)
Transfer - Level 3 or higher (one person or two persons 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. #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: Individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) An individual must have five deficits on the PAS-2000 to qualify medically for the ADW Program. These deficits are determined from a combination of elements on the PAS-2000.
- 2) Two deficits were established at the time of the PAS review on 06/08/05. Those were physical assistance with dressing and physically unable to vacate in the event of an emergency.
- 3) Testimony received from and on behalf of the claimant does clearly demonstrate that the claimant needs physical assistance with bathing and grooming and is incontinent of the bladder more than three times per week. These findings would add three additional deficits.
- 4) There are five total deficits.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does meet the medical criteria for the ADW Program. The Department is reversed in the decision to terminate the claimant's benefits under the Aged/Disabled Home and Community-Based Services Waiver (ADW) Program. The action described in the notification letter dated July 6, 2005 will not be taken. The case will be reviewed as policy dictates.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of February, 2006.

**Margaret M. Mann
State Hearing Officer**