



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 9, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 12, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) 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.

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. [Aged/Disabled (HCB) Services Manual 570-570.1b (11/1/03)].

The information which was submitted at your hearing reveals that your medical condition does not 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 **uphold** the Department's proposal to deny your application 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
Kelly Ambrose, Esq., Assistant AG's Office
Charles Rogers, Esq., Legal Aid of WV

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

_____,

Claimant,

v.

Action Number: 05-BOR-6431

**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 9, 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 December 12, 2005 on a timely appeal filed June 30, 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
_____, Claimant's son
_____, Claimant's daughter-in-law
Charles Rogers, Esq., Legal Aid of WV
Kay Ikerd, RN, BoSS (by phone)
_____, RN, WVMi
Kelly Ambrose, Esq., Assistant AG's Office

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 is medically eligible for participation in 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 Denial Notice dated May 10, 2005.
- D-3 Medical Assessment, PAS-2000, completed on February 22, 2005
- D-4 Notice of Potential Denial dated 4/14/05.
- D-5 Additional information submitted to WVMi dated 4/21/05
- D-6 Referral form (application) completed on 1/19/05.

Claimant's Exhibits:

- C-1 Claimant's request for a hearing dated June 30, 2005.

VII. FINDINGS OF FACT:

- 1) The Claimant's application for participation in the Medicaid, Aged & Disabled Waiver Services Program was received by West Virginia Medical Institute (WVMi) on January 19, 2005 (D-6).
- 2) On February 22, 2005, WVMi medically assessed the Claimant to determine eligibility and completed a PAS-2000 (D-3).

- 3) On April 14, 2005, a Notice of Potential Denial 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, Vacate a Building, Grooming and Continence.

The Claimant was advised that additional medical information would be considered if received within the next 2 weeks.

- 4) The Claimant submitted additional medical information, exhibit D-5, which is a handwritten note from Dr. [REDACTED] M.D. dated 4/21/05 on the bottom of the Potential Denial Notice. This handwritten note states - "Pt is severely [sic] limited mentally due to CVA. She is not reliably oriented and able to self manage medications."

- 5) A Notice of Denial (D-2) was sent to the Claimant on May 10, 2005. This notices states:

Notice: Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

Reason for Decision: 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. Vacate a Building, Grooming and Continence.

- 6) In response to the Department's position that the Claimant's hearing request was not received in a timely matter, a ruling was made that the Claimant's appeal was received within 90-days of the denial notice as verified in exhibit C-1.
- 7) The contested findings on the PAS, specific to the Claimant's functional abilities, are orientation, medication administration and bathing.
- 8) In order for an individual to qualify for a deficit in the area of orientation, an individual must be identified as level 3 or higher (totally disoriented, comatose). Orientation is determined by assessing an individual's knowledge of person, place and time. The evidence reveals that the Claimant is cognizant of person and place but that she sometimes experiences difficulty with time and memory. The additional information submitted by Dr. [REDACTED] (D-5) states that the Claimant is not "reliably oriented," however, none of the evidence submitted to contest the Department's findings indicate that the Claimant is totally disoriented. Based on this finding, a deficit in orientation cannot be established.

- 9) Testimony and documentation reveals that a nurse currently gives the Claimant insulin shots two times a day. Insulin is medication that is often self-administered and used to help manage diabetes. If the Claimant cannot draw or administer her own insulin, she cannot self-medicate. While the Department's witness testified that giving an insulin injection is considered a professional / technical care need, this item is not listed on the PAS under section 27 and policy to support this statement was not cited. A deficit in medication administration is therefore awarded (+1).
- 10) Counsel for the Claimant alleged during the hearing that Ms. [REDACTED] testified that the Claimant requires help with bathing, however, a review of Ms. [REDACTED] testimony reveals that her statement followed written documentation found on page 5 of the PAS - "3 days a week an aid from home nursing is there to have her bath and she is only bathing 3 days a week now as prompted." Testimony received at the hearing reveals that a wash rag must be lathered with soap and placed in the Claimant's hands, but that she is able to wash herself with prompting. While the Claimant's daughter-in-law testified that she was informed after the assessment that the aid from home nursing was washing the Claimant's back during her visits, this testimony is hearsay and could not be confirmed by witnesses at the hearing. Based on this information, a deficit in bathing cannot be awarded.
- 11) 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.
- 12) 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.
- 13) 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 eligibility for participation in the Aged/Disabled Waiver Program on February 22, 2005.
- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 3) The February 22, 2005 medical assessment completed by WVMi identified three (3) program qualifying deficits – vacating a building, grooming and continence.
- 4) Evidence submitted at the hearing establishing one (1) additional deficit – The Claimant is unable to administer her own medications (+1).
- 5) Because the Claimant exhibits deficits in only four (4) of the specific categories of nursing services, the Claimant's 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 Department to deny your application for 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 9th Day of January 2006.

**Thomas E. Arnett
State Hearing Officer**