



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

May 17, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 11, 2006. 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 not meet the medical criteria for the ADW Program.

It is the decision of the State Hearing Officer to uphold 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
[REDACTED] CWVAS

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

_____,

Claimant.

v.

Action Number: 05-BOR-6834

**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 April 11, 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 April 11, 2006 on a timely appeal, filed October 21, 2005. It should be noted that this hearing was originally scheduled for January 26, 2006. It was rescheduled at the claimant's request to February 24, 2006. The hearing then had to be rescheduled to April 11, 2006 because the WVMI nurse was unavailable.

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, Central WV Aging Services, Inc.
_____, Claimant's Son
_____, Claimant's Granddaughter
_____, Claimant's Daughter
_____, _____ Commission on Aging, Inc.
_____, _____ Commission Aging
Kay Ikerd, RN. BoSS (By Telephone)
_____, 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 08/31/2005 and additional information submitted dated 09/23/2005
- D-3 Potential Denial Letter dated 09/12/2005
- D-4 Termination Notice dated 10/13/2005

Claimants' Exhibits:

- C-1 RN Assessment Form
- C-2 Statement from _____ dated 01/12/06

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of ADW services.

- 2) A review of medical eligibility was completed on 08/31/2005. Two deficits were found. The deficits found were physical assistance with grooming and bladder incontinence. (D-2)
- 3) The claimant was notified of potential case closure in a letter dated 09/12/2005. (D-3) Additional information was submitted and reviewed. A letter of termination was issued 10/13/2005. (D-4) The claimant requested a hearing on this issue.
- 4) The claimant disagrees with the findings that she is physically able to bathe, dress and feed herself and can vacate in the event of an emergency.
- 5) The diagnoses listed under #20 Health Assessment on the PAS-2000: Per referral form: NIDDM, hyperlipidemia, hyperthyroidism, osteoarthritis, and senile dementia. It is noted on the PAS-2000 that in the event of an emergency, the claimant can vacate with supervision and is able to administer her own medication. (D-2)
- 6) ██████████ discussed points on the PAS-2000 which she feels were contradictory. She feels the claimant's dementia played a part in the way the claimant answered the questions. 1) Bathing - When the claimant was asked if the workers ever helped her with her personal care or bath, she answered "no". The nurse's notes read in part that the claimant stated "I need help with my back because when I fell I can't reach my back. I can't reach around no farther than that & I have to take a towel like this (as she raised her rt arm up to her neck & put her left arm down beside he waist to show me (the nurse) how she holds a towel to wash her back). She wasn't able to reach her left arm behind her back but she could reach it up to her head." The claimant acted confused during the assessment. 2) Dressing – The PAS reads in part "I have to fasten my bra & pull it over my head my head & sometimes if I am going to the DR the girls have to help me straighten them in the back. I have two that snap in the front & they are fine" 3) Eating – The claimant reported on the PAS "Client denies (sic) that she has any trouble with cutting up her foods & says "I usu (sic) don't have no foods that I have to cut up." 4) Medication Administration – The claimant takes some over the counter eye drop medication. 5) Ability to vacate in the event of an emergency – Ms. ██████████ testified the claimant was given a "1" under orientation yet she stated during the assessment she forgets what day of the week it is.
- 7) ██████████ Homemaker, was working as of 08/23/05. She helps the claimant wash her feet and her back. Credible testimony from ██████████ revealed that the claimant cannot reach either one. She can bend sideways somewhat f ██████████ ██████████ her arms enough to reach her back. ██████████ testified that the claimant cannot fasten her bras in the back. ██████████ puts them over her arms and fastens them. She also fastens the bras that fasten in the front. When the claimant puts on the support hose, the claimant lies down and ██████████ works the hose over her legs. She then helps the claimant up and pulls the hose over her tummy. The claimant cannot put on her socks and ██████████ ties her shoes.
- 8) ██████████ testified that the claimant demonstrated how she used a towel with her arms – one up and one down to wash her back area. Because she reported how she fell some year ago she wasn't able to reach her arm around. The claimant reported she made adjustments in able to do her personal care. She later described how she took a bath.

The claimant was able to converse appropriately throughout the evaluation. She signed and dated the consent form correctly and neatly. She was able to provide her past medical history in detail without difficulty. She was able to review her medications and reported checking her own blood sugar and draws up and gives own insulin. She did not note any confusion on the part of the claimant during the assessment. It was noted on the evaluation that the claimant was dressed in a pullover blouse. The claimant had stated she was weak and tired and did not hunt for a gown. She changed her panties and put on her pants the day of the evaluation. The claimant reported she was able to pull her blouses over her head without assistance. She did report she can fasten bras that fasten in the front and for bras that fasten in the back, she fastens them and pulls them over her head. She only has to have the girls straighten them. She reported being able to put her own socks and shoes on at the time of the evaluation. The claimant reported she did not have trouble cutting up foods and she does not usually have food that needs to be cut up. Basically, if clients do not have foods that require cutting, they do not have the cutting up motion and therefore, require no assistance in doing so. The claimant's over the counter eye drop medication is not considered under medication administration. There is a difference in forgetfulness and disorientation. Forgetfulness is someone not knowing what day of the week it is until looking at a calendar. Disorientation is someone who does not know what day of the week it is despite looking at a calendar. The seizure disorder was noted on the PAS. At the time of the assessment, the claimant was independent with transferring/walking.

- 9) Ms. _____ testified her grandmother does not have a shower unit in her bathtub. The chair does not set flat in the bathtub. If her grandmother leans to wash the chair is going to tip over. There is no way the claimant can be properly bathed on her own. Her grandmother does not get accurate readings on the blood sugar machine. Her grandmother cannot button items of clothing on with buttons. The clothing has to have elastic in order for it to be stretched. Unless her grandmother has a doctor's appointment, she does not get dressed on a daily basis. She has bought her grandmother's groceries for the past four years and they consist of eggs, cottage cheese, coffee, Ensure and pretzels. These items can be ate with spoon or drank. The only meat she has bought for her grandmother is chicken because it can be boiled so it drops off of the bone. When her grandmother eats out in public, she will only get soft chew items. She does not want people in public see her food cut up for her. She brings her grandmother chili three times a week from Wendy's. Her grandmother spills her food. Her grandmother does not bake cakes (as noted on the PAS) – it is her (Ms. _____) daughter that does that.
- 10) Mr. _____ testified his mother has difficulty bathing on her own. There are some days she is alert and not alert on other days. Mr. _____ stated he buys most of his mother's clothes and he buys sweatpants and pullovers where his mother can get dressed more easily. They buy clothes that are usually easy on, easy off and oversized. Mr. _____ brings his mother breakfast (sausage, egg, & cheese biscuits) on Saturday and Sunday. His wife brings her salads.
- 11) Ms. _____ testified that the evaluation scared her mother. Her mother has trouble getting dressed. She will go in her nightgown two days. I she does not have a worker there, she will stay in her nightclothes.

- 12) 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.

- 13) 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.

- 14) 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.

- 15) 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 08/31/05. Those were physical assistance with grooming and bladder incontinence.
- 3) Credible testimony from the claimant's witnesses clearly demonstrates that the claimant needs physical assistance with bathing and dressing. Her homemaker testified she helps the claimant bathe and dress. Her granddaughter and son also testified that the claimant has difficulty bathing on her own and dressing. This determination would allow points for physical assistance with bathing and dressing.
- 4) There was no other evidence or testimony presented at the hearing that would change the other conclusions reached by the Department in regard to eating, orientation, ability to vacate in the event of an emergency and medication administration. The claimant does not need physical assistance with eating. The information presented at the hearing revealed that the claimant chooses foods that she is able to feed herself. Also, in order to receive a point for orientation, policy requires that an individual be totally disoriented, comatose. The claimant does not meet the criteria for orientation. In addition, the claimant demonstrated during the assessment interview that she was independent with transferring and walking. The nurse concluded that the claimant could vacate the in the event of an emergency with supervision. It was also determined that the claimant could administer her own medications.
- 5) The claimant has four deficits. She needs physical assistance with bathing, dressing and grooming and has bladder incontinence. Five deficits are needed on the PAS-2000 to qualify medically for the ADW Program.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does not meet the medical criteria for the ADW Program. The Department is upheld 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 October 13, 2005 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of May, 2006.

**Margaret M. Mann
State Hearing Officer**