



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 27, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 23, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Aged/Disabled (HCB) Title XIX 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.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state as follows: 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 where services can be provided. [Aged/Disabled (HCB) Services Manual Sections 570- 570.1b].

Information submitted at your hearing revealed that you meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CWVAS

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

_____,

Claimant,

v.

Action Number: 05-BOR-6917

**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 February 27, 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 February 23, 2006 on a timely appeal filed November 7, 2005.

II. PROGRAM PURPOSE:

The program entitled Aged/Disabled Waiver 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

_____, daughter of Claimant

_____, son-in-law of Claimant
_____, Case Manager, CWVAS
_____, Homemaker, CWVAS
Kay Ikerd, RN, BoSS
_____, RN, WVMi

Presiding at the hearing was Pamela L. Hinzman, 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 Agency is correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 570
- D-2 Pre-Admission Screening (PAS) 2000 assessment completed on September 14, 2005
- D-3 Letter of Potential Denial dated September 29, 2005 with additional information
- D-4 Letter of Denial dated October 25, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing a reevaluation to determine continued medical eligibility.
- 2) West Virginia Medical Institute completed a medical assessment (D-2) on September 14, 2005 and determined that the Claimant is not medically eligible to participate in the ADW Program.
- 3) The Claimant was notified of the potential denial (D-3) on September 29, 2005 and advised that she had two weeks to submit additional medical information for consideration. In response, the Claimant submitted letters from Dr. _____ and _____, but Ms. _____ testified that this documentation did not change deficit information on the PAS-2000.
- 4) On October 25, 2005, a denial notice (D-4) was sent to the Claimant.

- 5) Ms. [REDACTED] reviewed the PAS 2000 (D-2) and testified that two (2) deficits were established for the Claimant, including physical assistance with bathing and grooming.
- 6) Witnesses for the Claimant contended that additional deficits should be awarded in the following areas:

Physical assistance with eating- Ms. [REDACTED] testified that she was unable to be present for the PAS assessment, but stated that she has been cutting up her mother's food for some time. Ms. [REDACTED] testified that the Claimant reported needing no assistance with eating and was able to grip items on the date the PAS was completed.

Physical assistance with dressing- Ms. [REDACTED] testified that her mother has good and bad days, and requires assistance in putting on socks and shoes due to limited mobility. Ms. [REDACTED] testified that the Claimant reported needing no assistance with dressing on the date of the assessment. A letter from Dr. [REDACTED] (D-3), which was submitted in response to the Letter of Potential Denial, indicates that the Claimant's mobility is limited due to arthritis and that she needs help with daily activities such as dressing.

Bladder incontinence- Ms. [REDACTED] testified that her mother is incontinent of bladder three to four times per week, wears protective undergarments and fears leaving her residence because of her incontinence. Ms. [REDACTED] indicated that she observed no protective padding on furniture on the date of the assessment and that there was no urine odor in the household, however, the Claimant did report dribbling urine at times.

Inability to vacate the building in the event of an emergency- As a result of the Claimant's mild Alzheimer's dementia, Ms. [REDACTED] and the [REDACTED]s testified that they believe the Claimant would be incapable of vacating the building without assistance in the event of an emergency. Ms. [REDACTED] contended that the Claimant would be unable to find the stairs and exits. Ms. Ikerd testified that vacating with supervision does not count as a deficit for the Aged/Disabled Waiver Program.

- 7) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-7)- Program Eligibility for client:

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

C. Be approved as medically eligible for NF Level of Care.

- 8) Aged/Disabled Home and Community-Based Services Manual Section 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 A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
 - C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.
- 9) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW 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 B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.

E. #28: The individual is not capable of administering his/her own medication.

VIII. CONCLUSIONS OF LAW:

- 1) Policy clearly dictates that an individual must be awarded five (5) deficits on the PAS 2000 in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) Ms. [REDACTED] assessed the Claimant as having two (2) qualifying deficits on the PAS 2000, which was completed in conjunction with the Claimant's annual reevaluation.

- 3) As a result of testimony presented during the hearing, one (1) additional deficit is awarded to the Claimant in the area of physical assistance with eating. The Claimant's daughter was unable to be present for the PAS assessment, but testified during the hearing that she cuts up the Claimant's food.
- 4) One (1) additional deficit is established for incontinence of bladder. Ms. _____ testified that the Claimant loses control of her bladder at least three (3) times per week and uses protective undergarments.
- 5) One (1) additional deficit is awarded for physical assistance with dressing. Ms. _____ testified that her mother requires assistance putting on socks and shoes, and _____'s letter further substantiates this contention.
- 6) No additional deficit is awarded for inability to vacate the building in the event of an emergency. Testimony is credible that the Claimant would require supervision to vacate as a result of her mental capacity, but vacating with supervision does not constitute a deficit for purposes of ADW medical eligibility.
- 7) The addition of three (3) deficits brings the Claimant's total number of deficits to five (5). The Claimant is medically eligible for the Aged/Disabled Waiver Program since five (5) deficits are required for program qualification.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's 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 27th Day of February, 2006.

**Pamela L. Hinzman
State Hearing Officer**