



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

May 10, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 29, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services received through 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 which was submitted at your hearing reveals that your medical condition continues to 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 **reverse** 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
CCS

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

_____,
Claimant,

Action Number: 05-BOR-6921

**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 May 10, 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 March 29, 2006 on a timely appeal filed November 7, 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:

_____, Claimant
_____, Claimant's mother
_____, Homemaker, Helpings Hands
_____, RN, Helping Hands
_____, CM, CCS
_____, RN, WVMi (by phone)
Brian Holstine, 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 benefits and services provided through 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 Medical Assessment, PAS-2000, completed on September 26, 2005
- D-3 Notice of Potential Denial from WVMi dated October 11, 2005
- D-4 Notice of Termination/Denial dated October 27, 2005

VII. FINDINGS OF FACT:

- 1) On September 26, 2005, the Claimant was reevaluated (medically assessed) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program, and to confirm the appropriate Level of Care.
- 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.
- 3) The Claimant was notified of the potential denial (D-3) on October 11, 2005 and advised that he had two weeks to submit additional medical information before a final decision would be made.

- 4) On October 27, 2005, the Claimant was notified via a Termination/Denial Notice (D-4) that he was no longer medically eligible to participate in the ADW Program.
- 5) [REDACTED], RN, WVMI, reviewed the PAS-2000 (D-2) that she completed on September 26, 2005. Ms. [REDACTED] testified that her medical assessment resulted in the assignment of two deficits – Vacate a Building and Bathing. Because the Claimant exhibits only two (2) functional deficits, and five (5) deficits are required, medical eligibility could not be established.
- 6) The Claimant and his representatives contend that deficits should have been awarded in the following areas: Dressing, Grooming, Walking, Transferring and Incontinence (Urinary).
- 7) The Department's finding that the Claimant is able to dress independently is based in large part on the fact that he was able to take off his sock and put it back on during the assessment. However, the Claimant reported during the medical assessment that he routinely requires assistance with his shoes and socks and that he occasionally needs assistance with his shirt. Corroborating testimony received at the hearing affirms that the Claimant requires physical assistance with dressing and a deficit is therefore established (+1).
- 8) Testimony received in support of a deficit in walking reveals that the Claimant must be watch closely because he loses his balance and has fallen a couple times. The medical assessment reveals that the Claimant uses a cane most of the time but that he uses a walker as needed and a wheelchair outside of the home. Testimony received on the walking issue predominately indicates that the Claimant must be "watched" for fear that he may lose his balance. This information is consistent with the level 2 rating in walking which indicates the Claimant requires supervision / assisted device (not physical assistance). A deficit in walking cannot be established.
- 9) The Claimant was able to transfer with an assistive device (cane) during the assessment, however, credible testimony indicates that the Claimant's homemaker must "sometimes" assist the Claimant with transferring due to weakness and concerns about losing his balance. Documentation found in the PAS reveals that the Claimant reported during the assessment that both his feet and legs are always numb. In addition, the Claimant has a friend that comes over 7-days a week to assist him when the homemaker is not present. Based on the evidence, a deficit in transferring is awarded (+1).
- 10) The Claimant testified that the nurse must have misunderstood him when she documented urinary incontinence occurred only 2 times per week. The evidence reveals that episodes of urinary incontinence occur 2 to 4 times per week and there are occasions when it occurs more frequently. The standard used by WVMI to determine incontinence is three (3) or more episodes per week. Because urinary incontinence episodes of 2 to 4 times per week (or more) would equal the 3 or more times per week average required to qualify as incontinent, a deficit in incontinence is therefore established (+1).

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 continued medical eligibility for participation in the Aged/Disabled Waiver Program on September 26, 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 demonstrates two (2) program qualifying deficits – Vacate a Building and Bathing.
- 4) Evidence submitted at the hearing identified three (3) additional deficits – Incontinence of bladder, Dressing and Transferring.
- 5) Whereas the Claimant exhibits deficits in five (5) of the specific categories of nursing services, the Claimant's continued medical eligibility for participation in the Aged & Disabled Waiver Services Program is therefore established.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 10th Day of May, 2006.

Thomas E. Arnett
State Hearing Officer