



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

June 22, 2006

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 11, 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 no longer requires 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 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,

v.

Action Number: 05-BOR-6980

**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 June 22, 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 May 11, 2006 on a timely appeal filed November 18, 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:

[REDACTED], Claimant
[REDACTED], RN, Homemaker RN, CCS
[REDACTED], Homemaker, CCS
[REDACTED], CM, CCS
[REDACTED], RN, WVMI (participated telephonically)
Kay Ikerd, RN, BoSS (participate telephonically)
Melissa Hastings, SHO (observing)

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 12, 2005
- D-3 Notice of Potential Denial from WVMI dated 9/16/05
- D-3a Correspondence from [REDACTED], dated 9/9/05
- D-4 Notice of Termination/Denial dated 11/11/05

VII. FINDINGS OF FACT:

- 1) On September 10, 2005, the Claimant was reevaluated (medically assessed) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW, and to confirm the appropriate Level of Care.

- 2) On September 16, 2005, the Department notified the Claimant via a notice of Potential Denial (exhibit D-3) that medical eligibility could not be established. 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 – Vacating a building, grooming and continence.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

This notice goes on to advise the Claimant that he can provide additional information regarding his medical condition within the next 2-weeks for consideration before a final decision is made. Additional information was received and has been identified as Exhibit D-3a.

- 3) On November 11, 2005, the Claimant was notified that his ADW benefits and services would be terminated. This notice includes some of the following pertinent information:

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

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate / deny your homemaker and case management services.

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 – Vacating a building, grooming and continence.

- 4) The Claimant and his representatives are contesting the findings on the PAS as they contend a deficit should have been awarded in dressing, bathing and medication administration.
- 5) In exhibit D-3a, [REDACTED] D.O. states – “My patient, Mr. _____ is not able to care for himself. He needs assistance in bathing and dressing.”

While this letter goes on to discuss the Claimant’s mental illness, the only program qualifying “functional deficits” identified by the physician are bathing and dressing. Without question, the opinion of Dr. [REDACTED] is valued, however, this information fails to include any substantive details or specifics that explain why the Claimant cannot complete these tasks independently and what degree of assistance is required. In addition, it was later determined by Ms. [REDACTED] that the word “terminal” was used by Dr. [REDACTED] to mean that the Claimant’s mental illness was not going to get better as opposed to meaning he has less than six months to live. A deficit cannot be established based on the information included in exhibit D-3a.

- 6) [REDACTED] testified that she helps the Claimant with dressing. She testified that he typically sits on the bed and she must get his pants started for him and then he helps pull them up. She indicated that she helps him with his shoes and socks as well as buttons and zippers and that he is virtually reliant upon her for dressing. Ms. [REDACTED] testimony, however, is inconsistent with the information she provided during the assessment. According to Ms. [REDACTED] documentation, Ms. [REDACTED] indicated during the assessment that she must occasionally assist the Claimant with his shoes and socks when his back is hurting but he can dress himself the majority of the time.
- 7) [REDACTED] testified that she must assist the Claimant with bathing. She stated that she gets everything out for his bath and gets his wash cloth ready. Ms. [REDACTED] went on to say that the Claimant then washes his face but she must wash everything else. The only similarity in Ms. [REDACTED] testimony and the information provided on the day of the assessment is that she must get bath items ready. In fact, information secured at the time of the assessment reveals that Ms. [REDACTED] and the Claimant agreed that the Claimant does not require any assistance with washing and that it is always done by the client only.
- 8) Testimony received in support of a deficit in medication administration indicates that the Claimant requires only prompting and supervision. The Claimant's medication is set up in a pill box for the Claimant to self administer. While there was some testimony to indicate that the Claimant sometimes drops his medication, there does not appear to be any medical condition or reasoned thought to indicate he is not capable of administering his own medication. The Claimant requires prompting and supervision only and this level of assistance does not qualify as a deficit.
- 9) The Claimant's case relied heavily on the testimony provided by [REDACTED], however, Ms. [REDACTED] credibility is clearly questionable. Ms. [REDACTED] testified that the Claimant has not driven in four or five years, however, Ms. [REDACTED] witnessed the Claimant arrive in his car when he was late for his assessment the previous year. Additionally, Ms. [REDACTED] testimony regarding bathing and dressing are clearly inconsistent with the information she provided during the assessment. As a result, the testimony received at the hearing is unconvincing and a deficit cannot be awarded in bathing, dressing or medication administration.
- 10) 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.

11) 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.

12) 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 12, 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 three (3) program qualifying deficits – Vacating the building, grooming and continence.
- 4) Evidence submitted at the hearing fails to establish any additional deficits.
- 5) Whereas the Claimant exhibits deficits in three (3) of the specific categories of nursing services, continued 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 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 22nd Day of June, 2006.

**Thomas E. Arnett
State Hearing Officer**