



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

March 20, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 17, 2006. 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 Section 570]

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
CCIL
West Virginia Advocates

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

_____,

Claimant,

v.

Action Number: 05-BOR-7127

**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 March 20, 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 17, 2006 on a timely appeal filed December 14, 2005. The hearing was originally scheduled for February 17, 2006, but was rescheduled at the request of the Department.

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:

[REDACTED], Claimant's daughter/Homemaker, [REDACTED] Senior Center
[REDACTED], Case Manager, Nurse, CCIL
[REDACTED] Regional Advocate, West Virginia Advocates
[REDACTED] RN, WVMI
Brian Holstein, Licensed Social Worker, BoSS (participating telephonically)

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) 2005 assessment completed on November 2, 2005
- D-3 Notice of Potential Denial dated November 16, 2005
- D-4 Notice of Denial dated December 6, 2005

Claimant's Exhibits:

- C-1 Article 50 concerning Medication Administration by Unlicensed Personnel
- C-2 Title 64 Legislative Rule, Medication Administration by Unlicensed Personnel
- C-3 Olmstead decision
- C-4 Letter from [REDACTED] dated March 6, 2006
- C-5 RN Assessment Form

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 November 2, 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 November 16, 2005 and advised that she had two weeks to submit additional medical information.
- 4) On December 6, 2005, a denial notice (D-4) was sent to the Claimant.
- 5) ██████████ reviewed the PAS 2005 (D-2) and testified that four (4) deficits were established for the Claimant in the areas of physical assistance with bathing, dressing and grooming, as well as bowel incontinence.
- 6) The Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Physical assistance with eating- Ms. _____ testified that the Claimant's fingers lock up and that she cuts up the Claimant's food. ██████████ testified that the Claimant told her she could feed herself and cut up her own food on the date of the assessment.

Transferring- Ms. _____ testified that her mother fell and broke her hip, suffers pain and requires physical assistance to transfer. She stated that the Claimant can lift herself up by holding onto the sofa or walker, but cannot start walking by herself. In addition, she cannot transfer from the commode without assistance. Ms. _____ testified that she would never recommend that the Claimant get up and down without physical assistance.

While the Claimant transferred independently on the date of the assessment, Ms. ██████████ testified that the Claimant does not transfer by herself on most days and has fallen while attempting to transfer. She stated that the Claimant attempts to prove her own independence.

Inability to vacate the building in the event of an emergency- Ms. ██████████ testified that she does not believe the Claimant could vacate her residence unassisted in the event of an emergency.

Medication administration- Ms. _____ testified that she places pills into her mother's hand, and that her mother has dropped the pills and has been unaware that they were dropped. She said the Claimant cannot open medicine bottles. Ms. ██████████ also testified that she does not believe the Claimant could self-medicate. Ms. ██████████ testified that the Claimant told her that she could open medication bottles and grasp pills on the date of the assessment.

Skilled nursing needs- The Claimant's witnesses testified that she could not administer her own blood sugar checks, insulin shots and B-12 shots without assistance.

Ms. _____ testified that her mother, who is 90 years old, answered PAS questions to make her condition appear better than it actually is for fear that she will be placed in a nursing home. She stated that her mother did not want her to interrupt and provide information on the date of the assessment as a result of this fear.

- 7) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)- 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)
- B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).
 - 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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
 - 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 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. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

VIII. CONCLUSIONS OF LAW:

- 1) Policy clearly specifies that an individual must be awarded five (5) deficits on the PAS 2005 in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received four (4) deficits on the PAS completed by Ms. [REDACTED] in conjunction with her annual medical reevaluation.
- 3) As a result of testimony presented during the hearing, one (1) additional deficit is awarded for physical assistance with eating. Testimony is credible that the Claimant's daughter/homemaker must cut up her mother's food as a result of her locked joints.
- 4) One (1) additional deficit is awarded for one-person assistance with transferring. The Claimant's daughter/homemaker reported that she physically assists her mother in making the transition from rising to walking and that her mother is unable to transfer from the commode without physical assistance.
- 5) One (1) additional deficit is awarded for medication administration. Testimony is credible that the Claimant's daughter/homemaker places pills in her mother's hand and that the Claimant overstated her abilities on the date of the assessment.
- 6) No additional deficit is established for inability to vacate as the Claimant was not rated as Level 3 or higher in walking or Level 3 or higher in orientation on the PAS assessment.
- 7) No additional deficit is established for skilled nursing needs as no testimony was offered to indicate that the Claimant has skilled needs in one of the following areas for which points can be awarded: suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings or irrigations.
- 8) The addition of three (3) deficits brings the Claimant's total number of deficits to seven (7). Therefore, the Claimant continues to meet medical eligibility requirements for the Aged/Disabled Waiver Program.

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 20th day of March, 2006.

**Pamela L. Hinzman
State Hearing Officer**