



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 8, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 26, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Aged and Disabled Waiver case.

In arriving at a decision, the State Hearings 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 and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows: 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. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in 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. Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT).

The information submitted at your hearing revealed: You do not meet the medical eligibility criteria for continued Waiver Services.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to close the Aged and Disabled Waiver case.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Connie Tetrick, RN – BoSS
[REDACTED] RN – WVMI
[REDACTED] Case Manager – CWVAS, Inc.

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

Claimant,

v.

Action Number: 05-BOR-7131

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 8, 2006 for Mr. _____. 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 originally scheduled for March 10, 2006 on a timely appeal filed December 9, 2005. The hearing was rescheduled twice per requests by the Claimant and State Hearing Officer respectively. The hearing finally convened on May 26, 2006.

It should be noted here that Mr. _____ was receiving benefits at the time of the hearing. A pre-hearing conference was not held between the parties and, Mr. _____ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver Services 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

____, Sister

____ Case Manager – Central West Virginia Aging Services, Inc. (CWVAS)

____ RN – ____ Community Organization (BCCO)

Connie Tetrick RN – Bureau of Senior Services (BoSS)*

____, RN – West Virginia Medical Institute (WVMI)*

* Participated by conference call

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.*

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Does Mr. ____ meet the continued medical eligibility criteria for the Aged and Disabled Waiver Services Program?

V. APPLICABLE POLICY:

WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*

D-2 PAS dated 11/09/05

D-3 Termination/Denial Letter dated 12/06/05

D-4 Letter from _____, dated 11/21/05

D-5 Potential Denial Letter dated 11/16/05

D-6 Miscellaneous Hearing Documents

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1) This issue involves the denial of continued services under the Aged and Disabled Waiver Services Program. The re-evaluation assessment was completed on November 9, 2005, for Mr. _____. Those present during the assessment were Mr. ____; Ms. _____, Daughter; _____ RN - BCCOA; and Ms. _____, RN of the West Virginia Medical Institute (Exhibit D-2).

Ms. [REDACTED] determined through her evaluation that Mr. [REDACTED] only had two of the five required deficits to continue Waiver Services. The deficits were in the areas of Bathing and Grooming. It should be noted that the evaluation was based only on the day of the visit.

2) The West Virginia Medical Institute issued a Potential Denial Letter to Mr. [REDACTED] on November 16, 2005 (Exhibit D-5). According to the letter, Mr. [REDACTED] had deficiencies in 2 areas: Bathing and Grooming. Mr. [REDACTED] was given two weeks to provide any additional medical documentation for reconsideration.

3) [REDACTED] submitted a letter dated November 21, 2005, to WVMI on behalf of his patient, Mr. [REDACTED] (Exhibit D-4). Ms. [REDACTED] reviewed the letter on November 30, 2005 and determined no changes in deficits.

4) The WVMI issued a Termination Letter to Mr. [REDACTED] on December 6, 2005 (Exhibit D-3). The letter stated in part, "Because you have less than 5 deficits at the level required, your services are being terminated/denied."

5) Mr. [REDACTED] requested a fair hearing on December 8, 2005 (Exhibit D-6).

6) Ms. Connie Tetrick, RN reviewed the ADW Policy (Exhibit D-1). There were no questions from the participants.

7) The issues of disagreement were in the areas of Eating, Dressing; Vacating the Building and; Medication Administration. According to Ms. [REDACTED], the Plan of Care indicates Mr. [REDACTED] needs assistance to cut up foods due to his Osteoarthritis. This was supported by the testimony of Ms. [REDACTED] and Ms. [REDACTED], RN. **This is credible testimony and Mr. [REDACTED] receives a deficit for Eating.**

8) Ms. [REDACTED] disagreed with the lack of a deficit for Vacating. If Mr. [REDACTED] does not use his oxygen, he would be totally disoriented. According to the policy, to receive a deficit for Vacating the 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, Alzheimer's, or related condition.

Mr. [REDACTED] received a Level 2 rating (Intermittent Disoriented) in Orientation; Level 2 rating (Supervised Assistive Device) in Walking and; did not have a diagnosis of dementia, Alzheimer's, or related condition. **Mr. [REDACTED] does not receive a deficit for Vacating.**

9) Ms. [REDACTED] testified that her brother would not be able to take his medication, if someone did not lay them out for him. The policy for Medication Administration states, "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 some one other than the recipient at all times." **Mr. [REDACTED] does not receive a deficit for Medication Administration.**

10) Ms. [REDACTED] testified that Mr. [REDACTED]'s Plan of Care indicated assistance with Dressing. According to Ms. [REDACTED] testimony, Mr. [REDACTED] was able to button and unbutton his shirt on the day of the assessment. Ms. [REDACTED] was present during the assessment and did not object to [REDACTED]'s testimony. **Mr. [REDACTED] does not receive a deficit for Dressing.**

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:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in 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.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

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 2005 to qualify medically for the ADW 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 ____l or bladder functions at any time.)

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. 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. (Item 26 on the PAS 2005)
- E. 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 some one other than the recipient at all times.

VIII. CONCLUSIONS OF LAW:

The Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria states in part, "An individual must have five deficits on the PAS to qualify medically for the ADW Program."

The testimony and medical documentation indicates Mr. ____ received one (1) additional deficit in Eating. This will give Mr. ____ a total of three (3) deficits. He does not qualify for continued services under the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of June, 2006.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**