



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 31, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 20, 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]

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 under the Aged/Disabled Waiver Program.

Sincerely,

Thomas E. Arnett
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: 06-BOR-7165

**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 31, 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 April 20, 2006 on a timely appeal filed December 19, 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

_____, CM, CWVAS

██████████, Homemaker (observing)
██████████, RN, WVMI (participated telephonically)
Kay Ikerd, RN, BoSS (participated telephonically)

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(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 Sections 570 and 500
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on November 1, 2005
- D-3 Notice of Potential Denial dated November 9, 2005
- D-3a Additional medical documentation – Correspondence from ██████████ M.D. with fax cover dated 11/21/05.
- D-4 Notice of Denial dated December 15, 2005

Claimant's Exhibits:

- C-1 Physician's notes and medical reports from 7/21/05, 6/13/05, 10/26/05

VII. FINDINGS OF FACT:

- 1) On November 1, 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) The medical assessment (D-2) completed by WVMI determined that the Claimant is no longer medically eligible to participate in the ADW Program.
- 3) On November 9, 2005, a notice of Potential Denial (D-3) was sent to the Claimant. 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 2 areas – Bathing and Grooming.

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

The Claimant was notified that she could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final decision was made.

- 4) Additional medical information was received within the allotted time frame and has been identified as exhibit D-3a. WVMI reviewed this information and was unable to identify any additional deficits. One of the concerns noted by Ms. [REDACTED] was that she was unable to verify that Dr. [REDACTED] authored the correspondence submitted for reconsideration as the signature does not match Dr. [REDACTED]'s signature on the physician referral form.
- 5) A termination notice (D-4) was sent to the Claimant on December 15, 2005. 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 2 areas – Bathing and Grooming.

- 6) [REDACTED], RN, WVMI testified that she spoke with Dr. [REDACTED] on the phone because of the suspicious looking signature. Dr. [REDACTED] would neither confirm nor deny the signature on the correspondence was his and Ms. [REDACTED] indicated he appeared to be angry with her and WVMI. Ms. [REDACTED] went on to say that Dr. [REDACTED] originally indicated that the Claimant is in control of her bladder at times and at other times she is not. Ms. [REDACTED] testified that when she told Dr. [REDACTED] that this would qualify as “less than total incontinence,” he became very angry and said she has no control at all.
- 7) The Claimant and her representatives contend that she should be awarded a deficit in bladder incontinence, dressing and eating.
- 8) The Claimant has historically had a problem with her bladder and had a catheter until approximately two years ago when it had to be removed due to recurrent infections. Because of the multiple infections and recurrent use of antibiotics, her doctor advised her that she had to start wearing pull-ups. Additionally, the Claimant was diagnosed with urethrostenosis and urinary frequency. This, according to [REDACTED], causes mixed incontinency (stress and urge incontinency together) which results in a constant flow and a constant urge to void the bladder. Although the Claimant attempts to void her bladder in the toilet, she is always wet before she gets there. Based on the

evidence, and the medical notes included in exhibit C-1, the Claimant is totally incontinent and a deficit is therefore awarded (+1).

- 9) Testimony received in support of a deficit in eating reveals that the Claimant is unable to prepare a meal because she can't stand for long periods. She also testified that she has difficulty cutting up her food due to discomfort in her right arm related to nerve damage.

The Claimant reported during the assessment that she was able to cut her own food and stated "it's hard sometimes, but I can do it" Ms. [REDACTED] also noted in her assessment that the Claimant drank coffee from a cup using her right hand and that her grasp was strong.

Meal preparation is not considered when determining a deficit in eating and while the Claimant appears to experience some difficulty with cutting up her food, the evidence indicates the Claimant is able to cut her own food. No other difficulties were noted with eating and a deficit cannot be established with the evidence presented.

- 10) The Claimant testified that she sometimes has difficulty getting dressed because of the pain in her right arm. She stated that when this happens she must reposition herself and try again or use the left arm to do it. She stated that she typically sits on her bed while getting dressed and that she can usually get dressed without help. The Claimant's testimony is consistent with the information found in the PAS (D-2). A deficit in dressing cannot be awarded based on these findings.

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

- 12) 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.

- 13) 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) A medical assessment was completed on the Claimant to determine continued medical eligibility for participation in the Aged/Disabled Waiver Program on November 1, 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 WVMH reveals that the Claimant demonstrates two (2) program qualifying deficits – Bathing and Grooming.
- 4) Evidence submitted at the hearing identifies one (1) additional deficit – Incontinence of bladder.
- 5) Whereas the Claimant exhibits deficits in only 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 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 31st day of May, 2006.

**Thomas E. Arnett
State Hearing Officer**