



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 28, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 15, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue services under the Aged Disabled Waiver, A/DW, 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 A/DW 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 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 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the November 3, 2005 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED], CCIL - Boggess, BoSS - [REDACTED], WVMI

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

_____,
Claimant,

Action Number: 05-BOR-7166

**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 15, 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 15, 2006 on a timely appeal, filed December 19, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

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's Witnesses:

_____, claimant
_____, claimant's homemaker
_____, Coordinating Council for Independent Living
_____, RN, Selective Home Services

Department's Witnesses:

Libby Boggess, Bureau of Senior Services by phone
_____, WVMI nurse by phone

Presiding at the Hearing was Sharon K. Yoho, 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 Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §570**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1** Aged/Disabled Home and Community based Services Manual §570, 570.1 a,b.
- D-2** Pre-Admission Screening, PAS, completed November 3, 2005
- D-3** Eligibility Determination dated November 3, 2005
- D-4** Notice of potential denial dated November 16, 2005
- D-5** Notice of termination dated December 6, 2005

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 52-year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on November 3, 2005.
- 2) The claimant has primary diagnosis of Diabetes (poorly controlled), Hyperlipidemia and Chronic Pain.
- 3) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with only the claimant present. Present at the evaluation was Ms. _____, _____ and _____. The evaluating nurse determined

that the claimant had only three (3) qualifying deficits. She assigned a deficit for Ms. _____'s need for hands on assistance with bathing, grooming and dressing.

- 4) The only deficit issue addressed by the claimant's witnesses was in the area of walking. The claimant advised the evaluating nurse that she was able to walk 20 feet using a walker and someone beside her. The nurse's notes on the PAS regarding walking were: "Reports that she did have out patient physical therapy at Health South for endurance training, states that she is able to walk with her walker for 20 ft."
- 5) The claimant testified that she did walk 20 feet with the Physical Therapist at her side while receiving physical therapy at Health South. Ms. _____ gave no information to the evaluating nurse about walking in her home. Ms. _____ reports that the claimant stays in her wheelchair at all times in her home. Ms. _____ who was present during the PAS states that Ms. _____ was talking about her Health South therapy. She states that she has never known Ms. _____ to walk in the house.
- 6) Registered Nurse, _____, sees Ms. _____ more than once a month and states: "She is in her wheelchair 24/7 unless she is in bed."
- 7) Ms. _____ has been the claimant's homemaker for over a year and she reports that Ms. _____ cannot walk. Ms. _____ has never walked along beside Ms. _____ using a walker.
- 8) 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.

- 9) 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.

10) 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) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMi nurse assigned the claimant only three (3) qualifying deficits in the areas of bathing, dressing and grooming.

- 2) The issue raised at the hearing was in the area of walking. The WVMi nurse did not observe Ms. _____ ambulate during her assessment and mistakenly took a comment regarding some previous walking at physical therapy to mean she could currently walk in her home. Testimony and evidence does support that the claimant is unable to ambulate in her home. The claimant was remembering a time when she took some steps at physical therapy. The claimant cannot and does not walk in her home. The evaluating nurse should have given the claimant a level III for walking. Policy also stipulates that a client is unable to vacate a building if they are at a level III for walking. This would constitute two (2) additional deficits.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse should have assessed the claimant with five (5) qualifying deficits at the PAS including one for walking and one for vacating. With the authority granted to me by the WV State Board of Review, I am ruling to **reverse** the Agency's proposed action to discontinue this claimant's services under the Aged/Disabled Title XIX (HCB) Waiver program. I rule that the Department assign two (2) additional deficits for walking and vacating along with associated points in determining level of care.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of March 2006.

Sharon K. Yoho
State Hearing Officer