



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 18, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 7, 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 do not meet medical eligibility requirements for the Aged/Disabled 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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
Alva Page III, Esq., BMS
First Care Services
Charles Rogers, Esq., Legal Aid of WV

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

_____,
Claimant,

v.

Action Number: 06-BOR-7189

**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 September 18, 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 September 7, 2006 on a timely appeal filed December 21, 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
_____, RN, Case Manager, First Care Services
_____, RN, Supervisor, Pro Careers
Charles Rogers, Esq., Legal Aid of WV
Kay Ikerd, RN, BoSS (participating telephonically)
_____, RN, WVMI (participating telephonically)
Alva Page III, Esq., BMS (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 Request for hearing date-stamped December 21, 2005
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on November 7, 2005
- D-3 Notice of Potential Denial dated November 11, 2005
- D-4 Letter from _____
- D-5 Notice of Denial dated December 15, 2005
- D-6 Aged/Disabled Home and Community-Based Services Manual Section 570
- D-7 WVMI Evaluation Request

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 7, 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 11, 2005 and advised that she had two weeks to submit additional medical information. Additional

information (D-4) was submitted and reviewed, however, the information did not change the PAS findings.

- 4) On December 15, 2005, a denial notice (D-5) was sent to the Claimant.
- 5) The Department conceded four (4) deficits for the Claimant in the areas of physical assistance with eating, bathing, dressing and grooming.
- 6) The Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Inability to vacate the building in the event of an emergency- The Claimant testified that she does not believe she could vacate her residence in the event of an emergency. She testified that her residence only has one door and that she would be unable to climb out windows should an emergency arise. She testified that she has problems walking and sometimes obtains physical assistance from her homemaker. In addition, the Claimant testified that she has significant arthritis, back pain and muscle spasms, and receives inhalation therapy. She suffers from lupus and has fallen down because her legs give out on her. The Claimant also testified that she has a tendency to forget things.

The Claimant's Case Manager testified that the Claimant sometimes has difficulty with mental comprehension. She does not know whether the Claimant would have difficulty functioning if she is under stress or depressed.

The Nurse/Supervisor with Pro Careers agreed that the hill to the Claimant's residence is very steep, and noted that the Claimant's mild mental retardation and arthritis could present problems in emergency vacating.

The WVMi nurse testified that the Claimant was unassisted with transfers on the date of the assessment. She testified that the Claimant said she does not need anyone to help her get up or to hold onto her when she walks. PAS comments note that the Claimant uses a walker when she goes to town, but walks with a cane inside the house.

The Claimant was rated as a Level II in walking (supervised/assistive device) and was rated as being oriented on the date of the assessment.

Because the Claimant was not rated as a Level III in walking (one-person assistance) and stated on the date of the assessment that she did not need physical assistance to walk, no additional deficit is awarded for inability to vacate (physically) in the event of an emergency. While the Claimant suffers from some mental disorders, she was not rated as being totally disoriented on the date of the assessment, therefore, a vacating deficit cannot be established based on the Claimant's mental deficiencies.

- 7) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-6)-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 WVMI in conjunction with her annual medical reevaluation.
- 3) As a result of testimony presented during the hearing, zero additional deficits are awarded. Therefore, the Claimant lacks the required number of deficits to meet medical eligibility requirements for the Aged/Disabled Waiver Program.

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 18th day of September, 2006.

Pamela L. Hinzman
State Hearing Officer