



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

July 31, 2006

Dear Ms. _____:

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

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
CWVAS

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

_____,

Claimant,

v.

Action Number: 05-BOR-7193

**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 July 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 July 20, 2006 on a timely appeal filed January 6, 2006.

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
[REDACTED], Case Manager, CWVAS
[REDACTED] Homemaker RN, CWVAS
[REDACTED] Homemaker, Central West Virginia Area on Aging
[REDACTED], RN, WVM (participating telephonically)
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 500
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on November 29, 2005
- D-3 Notice of Potential Denial dated December 2, 2005
- D-4 Notice of Denial dated December 18, 2005

Claimant's Exhibits:

- C-1 Policy memorandums and information
- C-2 Letter from physician (Dr. Grant)

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 29, 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 December 2, 2005 and advised that she had two weeks to submit additional medical information.

- 4) On December 18, 2005, a denial notice (D-4) was sent to the Claimant.
- 5) Ms. [REDACTED] reviewed the PAS 2005 (D-2) and testified that three (3) deficits were established as a result of the assessment. Those deficits included physical assistance with bathing, dressing and grooming.
- 6) The Claimant and her representatives contended that additional deficits should be awarded in the following areas:

Bowel and bladder incontinence- The Claimant, who has had bladder problems and colon cancer, testified that she wears adult incontinence products and only makes it to the bathroom once in a while.

Ms. [REDACTED] responded that the Claimant had indicated that she wears adult diapers, but makes it to the bathroom or bedside commode at times. Therefore, she was not rated as totally incontinent of bowel and bladder.

No additional deficits are awarded as the Claimant is not incontinent at all times.

Orientation- The Claimant testified that she is disoriented most of the time due to the effects of her medication. Ms. [REDACTED] and Ms. [REDACTED] concurred that the Claimant suffers from disorientation at times.

Ms. [REDACTED] responded that the Claimant was alert and oriented on the date of the assessment.

No additional deficits are awarded as the Claimant must be rated as totally disoriented or comatose to receive a deficit in this area. No deficits can be awarded for intermittent disorientation.

Physical assistance with walking and transferring- Ms. [REDACTED] testified that the Claimant had required assistance in traversing the stairs as she had been using continuous oxygen and the steps in her residence at the time of the assessment were narrow and steep. The Claimant testified that she has knee problems, dizziness and arthritis, and needs assistance in transferring in and out of automobiles. Information on the PAS assessment indicates that the Claimant has had frequent falls. Ms. [REDACTED], who has been the Claimant's homemaker for about one month and was not her homemaker at the time of the assessment, reportedly assists the Claimant with transfers at times.

Ms. [REDACTED] testified that the Claimant had reported using a cane and walker on the date of the assessment, that she walks down the stairs very slowly and that someone follows her down the steps. The Claimant had indicated that she sits down if she becomes dizzy.

One (1) additional deficit is awarded for physical assistance with walking as testimony is reasonable that the Claimant required assistance traversing the stairs at her residence on the date of the assessment. No additional deficit is awarded for transferring because the PAS assessment is based on the Claimant's functionality in the home. Testimony concerning physical assistance with transfers inside the home is

inconclusive since Ms. [REDACTED] was not the Claimant's homemaker at the time the PAS was completed.

Inability to administer medication- The Claimant testified that she becomes confused in regard to taking her medications and does not know whether she takes them. Ms. [REDACTED] testified that the Claimant would need assistance with medication monitoring.

Ms. [REDACTED] testified that she was informed during the assessment that the Claimant takes her medications on her own and no one places them in her hand or mouth.

No additional deficits are awarded for medication administration.

Wheeling- The Claimant testified that she uses a wheelchair if needed.

Ms. [REDACTED] testified that she had been informed during the assessment that the Claimant does not use a wheelchair in the home.

No additional deficit is awarded for physical assistance with wheeling.

Inability to vacate in the event of an emergency- The Claimant testified that at the time of the assessment, she would have been unable to vacate 15 steps from her bedroom to get downstairs in the event of an emergency. She testified that she could not climb out a window due to pain and inability to use her knees. Ms. [REDACTED] testified that the Claimant had resided in a two-story home, was on continuous oxygen and would have required assistance in traversing the stairs at the time of the assessment. Ms. [REDACTED] testified that emergency workers had to go to the Claimant's bedroom and remove her from the residence when a medical condition resulted in hospitalization shortly after the PAS was completed.

Ms. [REDACTED] testified that the Claimant did not receive the required ratings in walking or orientation to qualify for a deficit in vacating.

Because the Claimant has been elevated to a Level 3, physical assistance, with walking, one (1) additional deficit is awarded for inability to vacate in the event of an emergency. Both the Claimant and case management representatives provided testimony to indicate that the Claimant would have been unable to traverse the stairs without assistance in the event of an emergency. This testimony is credible in light of the Claimant's medical problems and use of continuous oxygen at the time the PAS was completed.

Ms. [REDACTED] contended that the Claimant should have been evaluated under the former ADW policy and provided some information (C-1) which she believes verifies that the recently implemented PAS criteria was in draft stage at the time of the Claimant's assessment in November 2005. Mr. Holstein responded that the new PAS was in effect in November 2005 and the information provided by Ms. [REDACTED] concerns additional policy matters.

- 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 three (3) 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, two (2) additional deficits are awarded to the Claimant in the areas of physical assistance with walking and vacating.
- 4) The addition of two (2) deficits brings the Claimant's total number of deficits to five (5) and she continues to meet 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 31st day of July, 2006.

**Pamela L. Hinzman
State Hearing Officer**