



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Ave.
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 23, 2006

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 17, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services received through the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver 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.

The Aged /Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to 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. [Aged/Disabled (HCB) Services Manual 570-570.1b (11/1/03)].

The information which was submitted at your hearing reveals that your medical condition continues to require 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 **reverse** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
_____, WVMH
Libby Boggess, BoSS
_____, Americare

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

____,

Claimant,

v.

Action Number: 05-BOR-7254

**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 17, 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 17, 2006 on a timely appeal filed January 5, 2006.

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

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) 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
_____, Claimant's Daughter
_____, Claimant's Daughter
_____, Claimant's Granddaughter
_____, Case Manager, Americare Management Services, Inc.
_____, RN, Mountain State Home Health Care, Inc.
_____, RN, WVMI (By phone)
Kay Ikerd, RN, BoSS (By phone)

Presiding at the Hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the claimant continues to be medically eligible for benefits and services provided through the Medicaid, Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 570.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
- D-2 Medical Assessment, PAS-2000, completed on October 20, 2005
- D-3 Additional Information from _____ dated 11/08/05
- D-4 Notice of Potential Denial from WVMI dated 10/31/05
- D-5 Notice of Termination/Denial Notice dated 12/22/05

Claimant's Exhibits:

- C-1 Medical Assessment, PAS-2005, completed February 21, 2006

VII. FINDINGS OF FACT:

- 1) On October 20, 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 (exhibit D-2) completed by WVMI determined that the claimant is no longer medically eligible to participate in the ADW Program.

- 3) On October 31, 2005, a notice of Potential Denial (exhibit D-4), 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 4 areas – Bathing, Grooming, Dressing and Continence.

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. Additional documentation was received and has been identified as exhibit D-3. This information did not change the findings.

- 4) A termination notice (exhibit D-5) was sent to the claimant on December 22, 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 4 areas – Bathing, Grooming, Dressing and Continence.

- 5) The nurse who completed the PAS-2000, [REDACTED], RN, WVMI discussed the assessment. The claimant was age 77 at the time of the assessment. Her primary diagnoses at that time were diabetes, coronary artery disease, depression, hyperlipidemia, vertigo, diabetic neuropathy, venous insufficiency, shortness of breath, arthritis and carpal tunnel. Those present during the assessment were the claimant and her husband, [REDACTED]. The claimant informed Ms. [REDACTED] that she would be able to exit the building without assistance in the event of an emergency although she noted her husband would need assistance getting out of the building and she would have to try and help him get out. When she asked the claimant about eating, she stated she was able to feed herself. She could cut up her food and does not require any assistance with this. She did say she had trouble opening jars. She also stated she could peel potatoes, cut up tomatoes and actually had canned some tomatoes and strung some beans. She showed Ms. [REDACTED] some sewing she had been doing – tree skirts to place under the Christmas tree. She still crochets. Ms. [REDACTED] did not do a grip test at the home. She just documented what the claimant had said. Under medication administration, the claimant was assessed with prompting/supervision. Under walking, the assessment was with supervised/assistive device. The claimant did report she holds on to the walls while walking through the house. Ms. [REDACTED] does not believe she reviewed her findings with those present.

- 6) Ms. ____ testified that her mother does need assistance in having her foods cut up. Her mother has a boiled egg for breakfast every morning and her homemaker peels the eggs for her. She does not feel her mother could vacate the home in the event of an emergency because of her shortness of breath and inability to hear. Most of the time she is able to walk using her cane and holding on to the furniture. Some days she can walk with very little assistance and other days the homemaker assists her. The family will dish out the medication in a pillbox and her homemaker prompts her mother with taking the medication. When it comes down to the house catching on fire, she does not know whether she could get out her not.
- 7) Testimony from Ms. ____ revealed that she cannot cut up food. She can pick it up with her hand. She has had trouble with her hands (carpal tunnel and tendonitis) at least since 2004. She can't do much crocheting at a time. The homemaker helped her with the canning.
- 8) Testimony from Ms. [REDACTED] revealed that the claimant has tendonitis and carpal tunnel which is documented on the PAS. She cannot grip a knife so that when they do have meat, the meat has to be cut for her by a family member or homemaker. She does extremely small portions at a time when sewing or crocheting. That is to keep her fingers as limber as she can to keep the use of her hands. It does not take as much strength to crochet as it does to cut meat. There is more force required and her hands cannot handle that. The homemaker assists the claimant at times with walking. There have been episodes where she takes her husband's medication. Ms. [REDACTED] also testified that she and family members had planned on being present for the assessment. Somehow there had been a miscommunication on the assessment date.
- 9) Testimony from Ms. ____ revealed there was an incident prior to the September assessment when Ms. ____ caught the floor on fire. Ms. ____ did not know what to get to get the fire out. She had got the curtains, floor and sink. The pan was still on fire. If Ms. ____ had not walked in when she did, Ms. ____ would not have known what to do.
- 10) Testimony from Ms. [REDACTED] revealed she agreed that the claimant needs help cutting up her food and taking her medication.
- 11) Section 570 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

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.
- 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.

- 12) Section 570.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

- 13) Section 570.1.a of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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 level of care (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.

- 14) Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. #24: Decubitus - Stage 3 or 4
- B. #25 In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
- C. #26: Functional abilities of individual in the home:
 - 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 incontinent)
 - 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. #27: 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.
- E. #28: Individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 2) The medical assessment completed by WVMi reveals that the claimant demonstrates four (4) program qualifying deficits – Bathing, Grooming, Dressing and Continence.
- 3) An additional deficit will be awarded for physical assistance with eating. The claimant had been assessed as self/prompting for eating. This was based on what she had told the nurse during the assessment. However, credible testimony at the hearing by and on behalf of the claimant revealed that she does require assistance with the cutting of meat. She has carpal tunnel and tendonitis and has trouble gripping a knife.
- 4) No additional deficits will be added for walking, medication administration and the claimant's ability to vacate in the event of an emergency. The claimant was assessed as (2) supervised/assistive device for walking. There was no clear testimony or evidence presented that would change this determination. Testimony did support the nurse's finding that the claimant needs prompting/supervision with her medication administration. Her medication is set up for her in a pillbox and she is prompted when taking the medication. It was also determined by the nurse that in the event of an emergency, the claimant could vacate with supervision. Testimony also supports this finding as it is evident the claimant would be confused during a fire and would need supervision evacuating.
- 5) Whereas the claimant exhibits deficits in five (5) of the specific categories of nursing services, the claimant's continued medical eligibility for participation in the Aged & Disabled Waiver Services Program is therefore established.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate the claimant's benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program. The action described in the notification letter dated December 22, 2005 will not be taken. The case will be reviewed as policy dictates.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd Day of May, 2006.

**Margaret M. Mann
State Hearing Officer**