



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

February 27, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 21, 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
CWVAS

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

_____,

Claimant,

v.

Action Number: 05-BOR-7268

**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 February 27, 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 February 21, 2006 on a timely appeal filed January 5, 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:

_____, Claimant
_____, wife of Claimant
_____, Claimant's son and caregiver, Ultracare
_____, RN, Case Manager, CWVAS
_____, RN, Ultracare
_____, owner, Ultracare
_____, RN, WVMI
Kay Ikerd, RN, 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 Sections 570 and 500
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on November 22, 2005
- D-3 Notice of Potential Denial dated December 8, 2005
- D-4 Notice of Denial dated December 27, 2005

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 22, 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 8, 2005 and advised that he had two weeks to submit additional medical information.
- 4) On December 27, 2005, a denial notice (D-4) was sent to the Claimant.

- 5) Ms. ██████ reviewed the PAS 2005 (D-2) and testified that three (3) deficits were established for the Claimant in the areas of physical assistance with bathing, dressing and grooming.
- 6) The Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Medication administration- The Claimant's wife testified that she administers the Claimant's insulin injections and now administers his oral medications. Ms. Ikerd testified that administration of insulin is not considered under medication administration on the PAS since insulin is an injectant. She added that injections are considered under skilled needs. Ms. ██████ contended that insulin is a medication, regardless of how it is administered. Ms. ██████ testified that on the date of the assessment the Claimant was able to take his pills from the medication container.

The hearing record remained open until February 24, 2006 so that Ms. Ikerd could provide additional policy information concerning medication administration. The information (D-1), from Chapter 500 of the Aged/Disabled Waiver Manual, was submitted on February 22, 2006 and refers to covered and authorized services under West Virginia Medicaid. It states:

Any service, procedure, item, or situation not discussed in the manual must be presumed non-covered unless informed otherwise in writing by the Bureau for Medical Services.

This information does not address Aged/Disabled Waiver Program medical eligibility criteria.

Orientation- Ms. ██████ testified that the Claimant has a diagnosis of dementia and questioned why the PAS indicates that he was totally oriented. The Claimant's son testified that the Claimant's dementia has progressed in the past month and that he also suffered from memory lapses during the time of the assessment. Ms. ██████ testified that the Claimant was oriented on the date of the assessment and was assessed as a Level 1 (oriented). She stated that intermittent disorientation, Level 2, does not constitute a deficit on the PAS. In addition, Ms. Ikerd testified that a Claimant must be rated as a Level 3 or higher in orientation (totally disoriented, comatose) in order to be evaluated for mental inability to vacate a building in the event of an emergency.

- 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 his annual medical reevaluation.
- 3) As a result of testimony presented during the hearing, no additional deficit is awarded for medication administration. While insulin is unquestionably a prescribed medication and is administered by the Claimant's wife, the PAS 2005 stipulates that medication administration is specifically defined as medicine that must be placed in the recipient's hand, mouth, tube or eye by another individual. The policy makes no reference to medication that is injected and Ms. Ikerd testified that prescription injectants are classified under skilled needs.
- 4) No additional deficit is awarded for orientation as Ms. [REDACTED] testified that the Claimant was oriented on the date of the assessment and that intermittent disorientation does not constitute a deficit for the Aged/Disabled Waiver Program.
- 5) The Claimant's deficits remain at three (3) and he continues to lack the five (5) required deficits for Aged/Disabled Waiver Program eligibility. Therefore, the Department's proposal to terminate Waiver services is valid.

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 27th day of February, 2006.

**Pamela L. Hinzman
State Hearing Officer**