



State of West _____
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

May 24, 2006

_____ for _____

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 10, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your mother's 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 Sections 570- 570.1b].

Information submitted at the hearing reveals that your mother does not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your mother's 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

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

_____,

Claimant,

v.

Action Number: 06-BOR-822

**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 May 24, 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 May 10, 2006 on a timely appeal filed January 17, 2006. The hearing was originally scheduled for March 2, 2006, but was rescheduled for March 29, 2006 and again for March 31, 2006. The hearing was conducted telephonically with all parties.

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 son and Power of Attorney
Dr. _____, Claimant's physician
Brian Holstein, Licensed Social Worker, BoSS
_____, RN, WVMI

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 was correct in its action to deny 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 570
- D-2 Pre-Admission Screening (PAS) 2000 assessment completed on October 13, 2005
- D-3 Notice of Potential Denial dated October 20, 2005
- D-4 Notice of Denial dated December 8, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant applied for Aged & Disabled Waiver services, hereinafter ADW, and underwent an evaluation to determine medical eligibility.
- 2) West Virginia Medical Institute completed a medical assessment (D-2) on October 13, 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 October 20, 2005 and advised that she had two weeks to submit additional medical information.
- 4) On December 8, 2005, a denial notice (D-4) was sent to the Claimant.
- 5) Ms. _____ reviewed the PAS 2000 (D-2) and testified that two deficits were established for the Claimant, including physical inability to vacate the building in the event of an emergency and physical assistance with walking.

- 6) Witnesses for the Claimant contended that additional deficits should be awarded in the following areas:

Medication administration- Mr. _____, who testified that his mother overstates her abilities to others, testified that his mother cannot remember to take her medication. Dr. [REDACTED] concurred with that testimony.

No deficit is awarded in this area since there was no testimony to indicate that the Claimant would require more than prompting or supervision to medicate.

Eating- Mr. _____ testified that his mother has neuropathy and can't tell when she cuts herself or burns her hands while cooking. He stated that she can pick up a fork, but her ability to prepare food is impaired. Dr. [REDACTED] concurred with that testimony. Ms. [REDACTED] indicated that the Claimant told her she could cut her own food and feed herself on the date of the assessment.

No additional deficit is awarded in this area since food preparation is not considered in determining a Claimant's ability to eat and testimony indicates that she is capable of using eating utensils.

Dressing- Mr. _____ testified that his mother normally wears pull-over shirts because it takes her considerable time to button a blouse. Mr. _____ testified that he assists his mother with buttoning blouses when he visits and he believes that other individuals assist her with buttoning as well. Ms. [REDACTED] testified that the Claimant told her she did not need assistance with dressing at the time the PAS was completed.

In light of the Claimant's diagnosis of hand/finger neuropathy, one (1) additional deficit is awarded for physical assistance with dressing as testimony is credible that the Claimant sometimes receives assistance from others with fastening buttons.

Bathing- Mr. _____ testified that it takes his mother one to two hours to bathe herself. Ms. [REDACTED] testified that the Claimant stated she did not need assistance with bathing at the time of the PAS.

No additional deficit is awarded in this area since the Claimant was able to bathe herself at the time of the assessment and no testimony was offered to indicate that the Claimant receives assistance with this activity.

Grooming- Mr. _____ testified that his mother is incapable of washing her hair and goes to a salon for this service because she cannot stand up on her own. PAS comments indicate that the Claimant stated she did not need assistance with grooming on the date of the assessment.

One (1) additional deficit is awarded for physical assistance with grooming since the Claimant does not shampoo her own hair.

Decubitis- The Claimant's left leg has been amputated below the knee and Dr. [REDACTED] testified about the Claimant's history of decubitis. However, he noted that the Claimant had an area of decubitis that was recently healed at the time of the assessment. He discussed ulcers the Claimant has had as a result of crawling across the floor to ambulate. Ms. [REDACTED] testified that the Claimant stated that she does ambulate by sitting and crossing the floor, but that she also uses a power wheelchair to maneuver.

No additional deficit is awarded for decubitis because the Claimant reportedly had no decubitis on the date of the assessment.

Wheeling- Mr. [REDACTED] testified that his mother only uses her electric wheelchair in the home and that individuals must open doors for her when she goes into a building or store. Dr. [REDACTED] concurred.

No additional deficit is awarded because PAS findings are based on the Claimant's functional ability inside the home.

Bowel incontinence- Mr. [REDACTED] testified that his mother has a portable potty chair in her bathroom, but he is uncertain about whether she has an incontinence problem or if the chair is a convenience.

No additional deficit is awarded for incontinence as testimony concerning this deficit is inconclusive.

Orientation- Dr. [REDACTED] testified that the Claimant had a period of disorientation last year. Mr. [REDACTED] stated that the Claimant has difficulty remembering recent happenings/conversations.

No additional deficit is awarded in this area because PAS comments indicate that the Claimant was alert and oriented on the date of the assessment.

- 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. #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 person assist in the home)
 - Walking----- Level 3 or higher (one person or two 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 B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.
- E. #28: The individual is not capable of administering his/her own medication.

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires an individual to receive five (5) deficits on the PAS 2000 in order to meet medical eligibility requirements for the Aged/Disabled Waiver Program.

- 2) 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 grooming and dressing.
- 3) The awarding of two (2) additional deficits brings the Claimant's total number of deficits to four (4). Therefore, the Claimant continues to lack the required five (5) deficits to establish medical eligibility.
- 4) The Department acted correctly in denying the Claimant's application for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's action to deny 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 24th Day of May, 2006.

**Pamela L. Hinzman
State Hearing Officer**