



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

June 9, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 6, 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: 06-BOR-906

**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 June 9, 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 June 6, 2006 on a timely appeal filed January 23, 2006. The hearing was originally scheduled for May 18, 2006, but was rescheduled at the request of the Department.

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], daughter of Claimant
[REDACTED], Homemaker, RN, Braxton County Senior Center
[REDACTED], Case Manager, Central West Virginia Aging Services
[REDACTED], Homemaker, Braxton County Senior Center
Brian Holstein, Licensed Social Worker, BoSS (participating telephonically)
[REDACTED], RN, WVMI (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 2, 2005 with additional information
- D-4 Notice of Denial dated January 18, 2006

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 2, 2005 and advised that she had two weeks to submit additional medical information. Additional information was submitted, however, it did not change the PAS findings.
- 4) On January 18, 2006, a denial notice (D-4) was sent to the Claimant.

- 5) Ms. [REDACTED] reviewed the PAS 2005 (D-2) and testified that four (4) deficits were established 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:

Physical assistance with transferring and walking- Ms. [REDACTED] testified regarding a letter from Dr. [REDACTED] dated December 15, 2005 which was submitted to WVMI as additional information upon receipt of the Notice of Potential Denial (D-3). The letter states, in part:

Ms. ____ is 85 years old and has a history of fairly severe chronic obstructive pulmonary disease and significant osteoarthritis. She ambulates very little and the only ambulation she does do is with a walker and assistance. She is certainly at high risk for falling and if she falls of course, there is a high risk of fracture. She also takes anticoagulant in the form of Coumadin. She has a history of a previous deep venous thrombosis. This of course, makes her at more risk if she would fall.

Ms. [REDACTED] testified that the Claimant did transfer from a lift chair to a standing position during Ms. [REDACTED]'s assessment and walked five or six steps to an area in her mobile at which she would have had to step down as the home has two levels. She stated that Ms. [REDACTED] told the Claimant to return to her seat at that time. Ms. [REDACTED] testified that climbing down that step would have required physical assistance for the Claimant. Ms. [REDACTED] who also testified that the Claimant has had compression fractures in her back, stated that it is necessary for the Claimant to use the lift chair for transfers. The Claimant requires physical assistance with transfers, however, when she is transferring from a non-lift chair, with getting in or out of the shower, or with getting in and out of a hospital bed. Ms. [REDACTED] testified that even though the Claimant took a few steps on the date of the assessment, there is no way she can complete activities of daily living without assistance in the home.

Ms. ____ and Ms. [REDACTED] agreed that the Claimant requires physical assistance with walking and transferring on a daily basis.

Ms. [REDACTED] testified that the Claimant was able to get up using a lift chair and walked a few steps on the date of the assessment.

As a result of credible testimony presented during the hearing, one (1) additional deficit is awarded for physical assistance with walking and one (1) additional deficit is awarded for physical assistance with transferring.

Physical inability to vacate in the event of an emergency- Ms. [REDACTED] testified that she believes the Claimant is incapable of vacating her home without assistance at any time, not only during an emergency. Mr. [REDACTED] testified that the only time the Claimant leaves the home is to attend medical appointments. He stated that the Claimant is on continuous oxygen

Ms. [REDACTED] testified that the Claimant did not receive a deficit for vacating because she had not been rated as a Level 3 (one-person assistance) or higher in walking or a Level 3 or higher in orientation with a corresponding diagnosis.

Since the Claimant's rating was elevated from a Level II (supervised/assistive device) to a Level III (one-person assistance) in walking, one (1) additional deficit is awarded for inability to vacate.

Inability to self-administer medications- Mr. [REDACTED] testified that the Claimant was not using prescribed eye drops at the time of the assessment, but she had two or three eye infections during the year and the Claimant's daughter had to administer her eye drops. Ms. ____ concurred.

Ms. [REDACTED] testified that the Claimant was using no eye drops at the time of the assessment and she was told that medication was not placed in the Claimant's hand at all times.

As a result of testimony presented during the hearing, one (1) additional deficit is awarded for inability to administer medication as the Claimant must have eye drops placed in her eye by another individual each time the drops are used. While the Claimant was not using eye drops at the time of the assessment, Mr. [REDACTED] testified that she does have eye infections at times and would, therefore, require assistance.

Bladder incontinence- Mr. [REDACTED] testified that the Claimant has daily incontinent episodes and has been approved for Medicaid-covered incontinence supplies through WVMI. Ms. ____ testified that her mother must be changed as much as two to three times daily as a result of accidents. Ms. [REDACTED] estimated that the Claimant does not make it to the bathroom 80 percent of the time.

No additional point is awarded in this area as testimony reveals that the Claimant is less than totally incontinent.

Wheeling- Ms. [REDACTED] testified that the Claimant does have a wheelchair, but Ms. ____ stated that the wheelchair is not used inside the home.

Ms. [REDACTED] testified that no deficit was awarded for wheeling because the wheelchair is not used inside the home.

No additional deficit is awarded for wheeling since the PAS assessment concerns the Claimant's functional ability inside the home.

- 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 four (4) 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, four (4) additional deficits were awarded in the areas of physical assistance with walking and transfers, inability to vacate and inability to self-administer medication.
- 4) The awarding of four (4) additional deficits brings the Claimant's total number of deficits to eight (8) and renders her medically eligible 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 9th day of June, 2006.

**Pamela L. Hinzman
State Hearing Officer**