



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 18, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 10, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through 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 503]

The information 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 provided through the Medicaid, Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
CCS

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

_____,

Claimant,

v.

Action Number: 07-BOR-1114

**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 18, 2007 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 10, 2007 on a timely appeal filed April 6, 2007.

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

_____, Claimant's son

_____, Claimant's homemaker

_____, CM, CCS

_____, RN, Helping Hands

Cathie Zuspan, RN, BoSS (Participated telephonically)

_____, RN, WVMi (Participated telephonically)

Presiding at the hearing was Thomas E. Arnett, 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 decision to propose termination of the Claimant's benefits and services provided through the Aged & Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 503, 503.1, 503.1.1 and 503.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 503
- D-2 Pre-Admission Screening (PAS) assessment completed on February 26, 2007
- D-3 Notice of Potential Denial dated March 12, 2007
- D-4 Notice of Termination/Denial dated March 27, 2007

Claimant's Exhibits:

- C-1 Correspondence from Dr. _____ D. O. dated 7/5/07
- C-2 Rx pad – "Incontinent at HS," signed by _____ D.O.

VII. FINDINGS OF FACT:

- 1) On February 26, 2007, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on 2/26/07}.

- 2) On or about March 12, 2007, the Claimant was notified of Potential Denial (Exhibit D-3). 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, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2.

Based on your PAS you have deficiencies in only 3 areas – Vacate a Building, Bathing and Grooming.

The Claimant was notified that he could provide additional information regarding his medical condition within the next 2-weeks for consideration before a final decision was made, however, no additional medical documentation was submitted.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated March 27, 2007 (Exhibit D-4). This notice states, in pertinent part:

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 A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: 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 3 areas – Vacate a Building, Bathing and Grooming.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) The Claimant and his representatives contend that he remains medically eligible to participate in the ADW Program as he also demonstrates deficits in *Eating, Dressing* and *Continence*.
- 5) [REDACTED] RN, purported that the medical assessment of the Claimant (Exhibit D-2) did not include two important diagnoses that are relevant in the establishment of additional deficits. RN [REDACTED] stated that when the WVMi RN contacted the Claimant's doctor's office, a newly employed nurse reviewed the Claimant's medical record and she was unfamiliar with the fact that the Claimant's large medical record consisted of two files. As a result, the old medical documentation was reviewed and the nurse incorrectly reported that the Claimant did not have a diagnosis of incontinence or protruding discs in his back.

- 6) The Claimant and his homemaker testified that Dr. [REDACTED] told them during an office visit approximately one week later that his newly employed nurse reviewed the wrong medical file. Further, the Claimant and his representatives reported that it is difficult to get documentation from Dr. [REDACTED] and that is why the information was not submitted within the two week timeframe following the potential denial.
- 7) The Department objected to the introduction of Exhibits C-1 & C-2 on the basis that they were not received within the 14-day time period. The Department's objection was noted and the documentation was admitted as relevant based on the misinformation provided by the Claimant's physician. Exhibits C-1 (correspondence from Dr. [REDACTED] date July 5, 2007) was submitted to verify lower back (disc) problems and Exhibit C-2 is an Rx pad signed by the Claimant's physician (incorrectly dated) indicating the Claimant is incontinent at night.
- 8) The Claimant reported during the medical assessment (page 6 of 7 of Exhibit D-2) that he needs assistance with dressing. He indicated that he cannot get his socks on-and-off and his homemaker must start his pants for him because he cannot bend over due to back pain and weakness. The Claimant also reported (page 2 of 7) that his disc problems in his back is the reason he was put on disability. The WVMi RN documented in Exhibit D-2 that the Claimant reported he can get his cloths off when he has an episode of incontinence and that he can reach his foot while sitting in a chair. The Claimant acknowledged that he said he could get wet cloths off but stated that he cannot get his cloths back on without assistance. Representatives testifying on behalf of the Claimant also purported that the claimant requires assistance with dressing due to his back problems.

Although a diagnosis of back problems (Exhibit C-1) should not have been necessary, this evidence supports the Claimant's contention that he is experiencing back pain due to protruding discs and lumbar radiculopathy. The Claimant's testimony regarding his functional ability to dress is consistent with the medical evidence, testimony received at the hearing from individuals speaking on his behalf, as well as the information documented in the medical assessment. **A deficit in *dressing* is therefore awarded.**

- 9) The WVMi RN stated that she would not have awarded the Claimant a deficit in incontinence even if she had received a diagnosis of incontinence at night (Exhibit C-2). The Claimant reported episodes of urinary incontinence only two (2) to three (3) times per week, which is "occasional incontinence" (level-2) and he does not use incontinent supplies. The date on the Rx pad is the Claimant's birthday and although this document supports a diagnosis of incontinence, in order to receive a deficit, an individual must be incontinent three (3) or more times per week (level-3).

There was no evidence presented at the hearing to refute the WVMi RN's testimony and documentation that episodes of incontinence occur no more than two (2) to three (3) times per week. This information, combined with the fact that the Claimant does not use incontinent supplies indicates that incontinence is not at a level-3. **Based on the evidence, a deficit cannot be awarded in *continence*.**

- 10) With regard to the Claimant's functional ability to eat, the Claimant reported during the assessment (Exhibit D-2, page 6 of 7) that he is able to feed himself and cut up his own food. He reported at the time of the assessment that he has tremors of arms and hands off and on (page 2 of 7) and stated that sometimes if he has tremors his homemaker will cut something up for him for she is afraid he will "cut himself" (page 6 of 7). The WVMi RN noted that the Claimant had tremors when he signed the consent form but concluded that he was able feed himself since he is able to shave and cut his own fingernails.

There was limited testimony received on this issue and most of which reiterated the documentation found in the medical assessment. The WVMi RN witnessed the Claimant's tremors and a review of Exhibit D-2 reveals that the Claimant shaves with an electric shaver (not a razor). In addition, testimony received at the hearing indicates that he bites his fingernails because he is unable to clip his nails. This information is consistent with an individual who has made modifications in order to deal with the difficulties associated with tremors. As a matter of safety, the Claimant "sometimes" requires assistance with cutting his food and therefore qualifies for a **functional deficit in eating**.

- 11) Aged/Disabled Home and Community-Based Services Manual Section 503 (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.

- 12) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 – 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.

- 13) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2 (D-1): An individual must have five (5) deficits on the Pre Admission Screening (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

#24 Decubitus - Stage 3 or 4

- #25 In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits.
- #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)
 Dressing ---- Level 2 or higher (physical assistance or more)
 Grooming--- Level 2 or higher (physical assistance or more)
 Continence (bowel, bladder) -- 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 assistance in the home)
 Walking----- Level 3 or higher (one-person assistance 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)
- #27 Individual has skilled needs in one or more of these areas B
 (g) suctioning, (h) tracheos_____, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.
- #28 Individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded three (3) deficits on a PAS completed by WVMi in February 2007 – Vacating, Bathing and Grooming.
- 3) The evidence submitted at the hearing identifies two (2) additional deficits – Dressing & Eating.
- 4) Whereas the Claimant demonstrates five (5) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program is therefore established.

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 through the Medicaid, 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 18th Day of July, 2007.

**Thomas E. Arnett
State Hearing Officer**