



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 12, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 16, 2007. Your hearing request was based on the Department of Health and Human Resources' denial of your medical eligibility 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 503]

Information submitted at your hearing reveals that you do meet the 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 deny your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl McKinney
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: 07-BOR-1149

**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 August 16, 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 August 16, 2007 on a timely appeal filed April 20, 2007.

It should be noted that the hearing was originally scheduled for June 15, 2007 and June 28, 2007 and was rescheduled at the Hearing Officer's request.

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], Claimant
[REDACTED], Case Manager, ResCare
Kay Ikerd, BOSS - participated telephonically
[REDACTED], WVMI - participated telephonically

Presiding at the hearing was Cheryl McKinney, 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 proposal to deny benefits under the Aged/Disabled Home and Community-Based Waiver 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 March 1, 2007
- D-3 Notice of Potential Denial dated March 12, 2007
- D-4 Notice of Denial dated April 6, 2007
- D-5 Letter from Claimant dated March 14, 2007

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an initial evaluation for eligibility under the Title XIX Aged and Disabled Waiver Program during the month of March 2007.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on March 1, 2007 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified that the Claimant received four

- (4) deficits on the Pre-Admission Screening (PAS) assessment in the areas of bathing, grooming, eating, and vacating a building.
- 3) The Claimant was sent a Notice of Potential Denial on March 12, 2007 (D-3) and was advised that she had two weeks to submit additional medical information for consideration by WVMI. The Claimant sent the Department a letter dated March 14, 2007 detailing her medical conditions and symptoms (D-5).
- 4) WVMI sent the Claimant a Notice of Denial (D-4) on April 6, 2007.
- 5) Representatives for the Claimant contended that additional deficits should be awarded in the following areas:

Walking: The Claimant was rated as walking independently and was not assessed a deficit. The WVMI nurse indicated on the Pre-Admission Screen (PAS) form that the Claimant ambulated independently in the home during the visit, did not hold to furniture or walls, and had a steady gait. The Claimant testified that she has problems walking in the mornings due to swollen feet and legs, but did not deny that she walks independently.

Bladder/Bowel Continence: The Claimant was rated as occasionally incontinent and was not assessed a deficit. The WVMI nurse recorded on the PAS that the Claimant stated she was bladder incontinent approximately once a month, and every three of four months she has bowel incontinence. The Claimant indicated during testimony that this was accurate at the time the PAS was completed

Dressing: The Claimant was rated as self/prompting in this area and not assessed a deficit. The WVMI nurse recorded on the PAS that the Claimant stated she has to hold to things at times to dress, but can apply her shirt, bra, pants, underpants, shoes, and socks. The Claimant indicated during testimony that this was an accurate description of her capabilities at the time the PAS was completed.

Medication Administration: The Claimant was rated as need prompting/supervision and was not assessed a deficit in this area. The WVMI nurse indicated in her notes on the PAS that she requires assistance with getting her medication out of the bottles, and is sometimes forgetful. She recorded that her sister sometimes “just lays them out” for her.

- 6) 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.

- 7) 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.
- 8) 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)tracheostomy, (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 dictates 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 Claimant received four (4) deficits in March 2007 in conjunction with her Aged/Disabled Waiver Program initial evaluation.
- 3) Evidence and testimony presented during this hearing support the finding of an additional one (1) deficit in the area of medication administration. Policy simply states in order to qualify for a deficit the individual must be incapable of administering his/her own medications. Evidence and testimony presented support the finding that Claimant cannot open her own bottles of medications without assistance, and is therefore incapable of administering her own medications.
- 4) The required five (5) deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to deny the Claimant's medical eligibility 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 12th Day of October, 2007.

**Cheryl McKinney
State Hearing Officer**