



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

December 7, 2007



Dear Mr. 

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 25, 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-1610

**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 October 25, 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 October 25, 2007 on a timely appeal filed June 21, 2007.

It should be noted that the hearing was previously scheduled for September 11, 2007 and again on September 20, 2007, and was rescheduled due to a schedule conflict.

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
██████████, ██████████
██████████, Homemaker, ██████████
Kay Ikerd, BOSS - participated telephonically
██████████, 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 May 21, 2007
- D-3 Notice of Potential Denial dated March 12, 2007
- D-4 Notice of Denial dated April 6, 2007

Claimant's Exhibits:

- C-1 Copy of IGBR29
- C-2 Letter from ██████████ dated June 1, 2007
- C-3 Letter from ██████████ dated August 9, 2007
- C-4 Copy of Appt. Notice dated July 23, 2007
- C-5 Copy of letter from ██████████ dated June 1, 2007
- C-6 Copy of Potential Denial notice dated May 31, 2007 and PAS

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for eligibility under the Title XIX Aged and Disabled Waiver Program during the month of May 2007.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on May 21, 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 vacating a building, eating, grooming, and walking.
- 3) The Claimant was sent a Notice of Potential Denial on May 31, 2007 (D-3) and was advised that he had two weeks to submit additional medical information for consideration by WVMI. The Claimant contends that a letter from the Claimant's physician (C-2) was sent to the Department on June 21, 2007 as additional medical information, and indicated a note was placed on the IGBR29 (C-1) indicating this was done. The Department contends that this information was never received. The letter from the physician indicates that the Claimant needs "physical assistance" with bathing and dressing.
- 4) WVMI sent the Claimant a Notice of Denial (D-4) on June 15, 2007.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Bathing: The Claimant was rated as self/prompting in this area. The WVMI nurse recorded on the PAS the following:

When it comes to bathing client states he has a hand held shower he baths with. Client notes he does have a shower chair he sits on. Client does have a walk in shower and states he is able to run his wheelchair into the shower and he is able to transfer himself from his wheelchair to his shower bench. Client notes he is able to bath himself. Client notes washing his legs and his feet is tough but he does this. Client notes he is able to get himself in and out of the shower by himself. He notes his shower has bars around it that he can hold onto it. Client notes he has a walk in shower not a tub. Client denies needing any help with his bathing.

The Claimant's homemaker testified that she helps the Claimant transfer to the shower, wash his back, and feet and legs, and helps him with drying off. The Claimant has testified that he cannot walk and this is documented on the PAS. The Claimant testified that he cannot wheel his wheelchair into the shower, only "up to" the shower. He must have assistance in transferring to the chair. The Claimant testified that although he does have a hand held shower, the homemaker uses it, not him. The Claimant's representative presented evidence in the form of a letter from the Claimant's physician that indicates he needs "physical assistance" with both bathing and grooming. The Claimant's representative contends the letter was faxed to the Department within the two week timeframe after the denial letter was received.

However, the Department indicates they did not receive it, and no evidence has been provided to show that the fax was sent timely. Therefore, the letter from the physician is not being considered as evidence in this case.

Dressing: The Claimant was rated as needing self/prompting in this area. The WVMI nurse recorded the following information on the PAS:

When it comes to dressing client notes he is able to get his shirts on. He notes he makes sure he has his pants with him when he baths. Client notes he would pull his pants on himself. Client notes he does wear elastic pants. The homemaker notes as long as she has known the client he has had elastic pants. Client notes he is able to get his shirts on himself. Client states he does not wear button up shirts. Client notes he is able to get his shoes and his socks on. Client notes he does wear the Velcro shoes. Client notes he usually will wear the Velcro shoes and not the tie up shoes. Client notes he does buy tee shirts and not button up shirts.

The claimant testified he needs help putting clothes on. He stated his homemaker helps him dress because he must hold on to something or he will fall down. The homemaker confirmed this. He cannot move his legs.

- 6) **Bladder:** The Claimant was assessed as being continent. The WVMI nurse recorded on the PAS that the Claimant indicated he has come awful close to having an accident but has never had any. The Claimant testified that he has an accident about once a day. The homemaker stated she has to clean his bed sometimes because of his accidents.
- 7) **Transferring:** The Claimant was assessed as needing supervised/assistive device. The WVMI nurse recorded on the PAS that the Claimant stated when it comes to transferring he does sleep in his bed. He does have an overhead trapeze rail on his bed and is able to get himself in and out of bed as long as he uses the trapeze bars. Client noted he is able to transfer himself from his wheelchair to his commode and has a riser on his commode with rails he uses to transfer. The Claimant testified during the hearing that he must have hands on assistance to get from his bed to the chair. The homemaker testified that she puts her hands around his waist and helps him transfer. Further recordings on the PAS indicate the Claimant cannot take any steps at all, and has not walked since 2003. Client uses a motorized wheelchair in the home.
- 8) **Medication Administration:** The Claimant was assessed as being able to administer his own medications. The WVMI nurse noted on the PAS that he is able to get medicine and give to himself, and that the Claimant noted he does not need to be reminded to take the medicine. The Claimant testified that his homemaker lays the medicine out on the table and he can scoop the pills up and take them himself.
- 9) 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.
- 10) 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.
- 11) 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 May 2007 in conjunction with his Aged/Disabled Waiver Program re-evaluation.
- 3) Evidence and testimony presented during this hearing support the finding of an additional one (1) deficit in the area of dressing, and one (1) additional deficit in the area of transferring, and one (1) additional deficit in the area of bathing, for a total of seven (7) deficits.
- 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 7th Day of December, 2007.

**Cheryl McKinney
State Hearing Officer**