



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 31, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 10, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services under the Aged Disabled Waiver, ADW, 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 ADW 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 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 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the June 21, 2007 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate services under the ADW Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

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

[REDACTED]
Kay Ikerd, BoSS

[REDACTED], WVMI

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

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Claimant,

v.

Action Number: 07-BOR-1819

**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 10, 2007 for █ on a timely appeal filed July 27, 2007. 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.

It should be noted here that the Claimant's benefits have been continued pending the hearing decision.

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 Witnesses:

██████████ Claimant's Nephew

██████████, Homemaker, ██████████

██████████, Case Manager, ██████████

Department's Witnesses:

Kay Ikerd, RN, Bureau of Senior Services (By telephone)

██████████, RN, West Virginia Medical Institute, (By telephone)

Presiding at the hearing was Margaret M. Mann, 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 Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) Program because medical requirements could not be met.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §500

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §503 - 503.4

D-2 Pre-Admission Screening, PAS, completed June 21, 2007

D-3 Potential Denial Notice dated June 27, 2007

D-4 Notice of Termination dated July 13, 2007

VII. FINDINGS OF FACT:

- 1) This Claimant is a 66-year-old female. She is a recipient of services under the ADW Program. In order to determine her ongoing medical eligibility, an assessment was scheduled for June 21, 2007.
- 2) The Claimant has primary diagnoses of HTN, DMII, Narcolepsy, Sleep Apnea, Hypothyroidism, and peripheral neuropathy. The Claimant lives in ground floor apartment alone. R, helper, there 5 days/wk, 5hrs/day. Her niece takes her to church. Receives Meals on Wheels 5 days a week.

- 3) A WV Medical Institute (WVMI) Nurse completed the Pre-Admission Screening (PAS) assessment in the Claimant's home with the Claimant and her present. The nurse determined from the answers given to her by the Claimant that she had two qualifying deficits. These were that the Claimant needs physical assistance with grooming and has bladder incontinence. (Exhibit D-2 & D-4) Once the assessment was completed, the documentation was reviewed with the applicant. Agreement voiced without further question or clarification. (Exhibit D-2) Testimony from the WVMI nurse revealed that the deficit for bathing should have been a '2', physical assistance. This would have counted as a deficit bringing the point total to three.
- 4) The issues addressed by the Claimant and her witnesses were in the areas of her physical ability to vacate the building in the event of an emergency, needs physical assistance with dressing, and her abilities with transferring and walking.
- 5) During the evaluation, the Claimant initially replied that she could get out of the apartment in case of emergency. The WVMI nurse revisited question at end of assessment and the Claimant insisted that she sometimes had to use a cane, but could ambulate out of building. The assessment reads under transferring that Claimant raised up from chair multiple times during assessment. Pushed up on the table with lt. arm and held to wall with rt. Walking: Claimant reported she uses cane in house on days when is feeling unsteady, probably twice a week. Described how she staggers backward at times, gets against wall and slides down rather than fall. Fell to floor Sunday approx. 4 wks. ago and held to kitchen cart and chair to pull-up. Answered door x2 during assessment. Gait appeared steady without holding to anything. Dressing: Wears a bra and puts it on by snapping in the front and sliding around. Gown noted to have buttons and verified she had secured them. Says she does have problems with zippers if in the back of clothing. Crossed lt. leg over rt. removed sock and put it back on to show me her foot. Pedal edema noted. Diabetic shoes have Velcro which she can put on without help. (Exhibit D-2)
- 6) Testimony from the case manager revealed that the Claimant's diagnosis of narcolepsy causes uncontrollable day time sleepiness. He witnessed one of these episodes in January 2007. The Claimant was out approximately ten minutes and it is his contention that if this happened during an emergency the Claimant would not be able to vacate. Also, he is unsure whether the Claimant could vacate because of her unsteadiness. The Claimant is on a CPAP machine at night.
- 7) Testimony from the Claimant's homemaker RW revealed that it was her opinion that the Claimant could not vacate in the event of an emergency. She also testified that the Claimant does not wear a bra much at home but when they go out she does help the Claimant put her bra on. She helps her to button her shirt and put her shoes and socks on. She always has when she is there and they are getting ready to go somewhere.
- 8) Testimony from the WVMI nurse revealed that during the assessment the Claimant described several episodes of aphasia during the month but nothing in regard to her ability to ambulate. She revisited the question twice and the Claimant insisted she would be able to get out of the building in case of a fire. The Claimant lives in a ground floor apartment. She observed the Claimant answer the door when she arrived and twice more during her visit. The Claimant was able to walk to the door, answer the door, and

walk back to the kitchen table. The Claimant was assessed as a level '2' (supervised/assistive device) for transferring and walking.

- 9) Testimony from the Claimant revealed that when she answered the question from the WVMI nurse about vacating she would like to think she could vacate. Thinking you can and actually doing it is two different things. She cannot remember how many narcoleptic episodes she has in a month. She has weak ankles and has falls in the house. There are times she cannot get up to answer the door or phone.

- 10) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

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.

- 11) Aged Disabled Home and Community-Based Services Manual Section 503.1: MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the ADW Program.

- 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 members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW 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 Manual Section 503.2 MEDICAL CRITERIA:

An individual must have five deficits on the Pre-Admission Screening Form (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 to vacate 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. (Item 25 on the PAS 2005).

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|----------------------------|---|
| a. Eating----- | Level 2 or higher (physical assistance to get nourishment, not preparation) |
| b. Bathing ---- | Level 2 or higher (physical assistance or more) |
| c. Grooming--- | Level 2 or higher (physical assistance or more) |
| d. Dressing ---- | Level 2 or higher (physical assistance or more) |
| e. Continence--
bowel | Level 3 or higher; must be incontinent |
| f. Continence--
bladder | Level 3 or higher; must be incontinent |
| g. Orientation-- | Level 3 or higher (totally disoriented, comatose) |
| h. Transfer----- | Level 3 or higher (one person or two person assist in the home) |
| i. Walking----- | Level 3 or higher (one person assist in the home) |
| j. 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 The individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMI nurse determined that the Claimant had three (3) qualifying deficits. Those were that the Claimant needs physical assistance with bathing, grooming, and has bladder incontinence.
- 2) The issues raised at the hearing were in the areas of dressing, transferring, walking, and the Claimant's physical ability to vacate in the event of an emergency.
- 3) The Claimant was assessed as being able to dress herself with prompting/supervision. The Claimant reported during the assessment that she could dress herself. While the homemaker testified she does help the Claimant dress at times when she is present, there was no clear information provided which documents the Claimant cannot dress herself. No additional deficit will be awarded for dressing.

- 4) The Claimant reported during the assessment that she would be able to vacate in the event of an emergency. There was much discussion during the hearing about how the Claimant's diagnosis of narcolepsy could affect her ability to vacate. However, at the time of the assessment, the Claimant reported she could vacate. Testimony revealed that the WMI nurse questioned the Claimant a second time about this issue and the Claimant reported she would be able to vacate. No additional deficit will be awarded for vacating.
- 5) The Claimant was assessed as needing supervised/assistive device for transferring and walking. There was no clear testimony or evidence provided at the hearing that would change this determination. The Claimant was mobile at the time of the assessment and reported using her cane on days she feels unsteady. No additional deficits will be awarded for transferring/walking.
- 6) As only three (3) deficits have been identified, this Claimant is not medically eligible for the ADW program and does not need the level of care provided in a nursing facility.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, the Department is upheld in their determination that this Claimant is not medically eligible for the Aged Disabled Title XIX (HCB) Waiver program. The action described in the notification letter dated July 13, 2007 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29

ENTERED this 31st Day of October, 2007.

**Margaret M. Mann
State Hearing Officer**