



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 6, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 27, 2007. Your hearing request was based on the Department of Health and Human Resources' proposed termination of 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 July 23, 2007 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearings Officer to **uphold** the action of the Department to terminate services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

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

[REDACTED], WVMI
[REDACTED]

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

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Claimant,

v.

Action Number: 07-BOR-2008

**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 November 27, 2007 for █ on a timely appeal filed August 22, 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.

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's Witnesses:

[REDACTED] claimant
[REDACTED] claimant's daughter-in-law
[REDACTED], claimant's homemaker, [REDACTED]
[REDACTED], homemaker RN, [REDACTED]

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services
[REDACTED], WVMI nurse

All participants appeared by speakerphone

Presiding at the Hearing was Sharon K. Yoho, 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.

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 thru 503.4
- D-2 Pre-Admission Screening, PAS, completed July 23, 2007
- D-3 Eligibility Determination dated July 23, 2007
- D-4 Notice of potential denial dated August 1, 2007
- D-5 Notice of denial dated August 17, 2007

VII. FINDINGS OF FACT:

- 1) This claimant is an 89-year-old female whose Aged Disabled waiver case was undergoing a re-evaluation in July 2007.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on July 23, 2007 with the claimant her daughter-in-law and her homemaker present. The nurse determined from observation and the answers given to her at the assessment that only three qualifying deficits could be awarded. Those qualifying deficits were in the areas of bathing, grooming and incontinence.

- 3) The issues introduced by the claimant and her witnesses were in the areas of dressing, orientation and vacating.
- 4) The evaluating nurse at the assessment was advised that the claimant always needs someone else to fasten her bra. The claimant can sometimes put her own bra on, but then has to have someone else fasten it. The evaluating nurse did not assess a point for dressing because she was told that the claimant put her own bra on that day.
- 5) The nurse observed that the claimant was oriented to person, place and time on the day of the assessment. She was not oriented to date, but was aware of the summer season. The claimant is diagnosed with Alzheimer's, Dementia, experiences confusion, and memory loss.
- 6) The claimant would need instructed to vacate in the event of an emergency. She would need prompting and supervision, but would be able to vacate without hands on assistance.
- 7) 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.

- 8) 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.

- 9) 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.

**10) 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.

**11) Aged Disabled Home and Community-Based Services Manual Section 503.4
MEDICAL REEVALUATION:**

Annual reevaluations for medical necessity for each ADW member must be conducted.

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, determine that the claimant had only three qualifying deficits in the areas of bathing, grooming and incontinence.
- 2) Evidence and testimony provided for this hearing did not support that a deficit should have been assessed in the areas of orientation or vacating at the time of the PAS. The claimant's diagnosis of Alzheimer's and Dementia at this time does not render the claimant totally disoriented. The claimant can physically vacate in the event of an emergency with prompting and supervision.
- 3) Evidence and testimony did support that the claimant should have been assessed a deficit for needing hands on assistance for dressing.
- 4) The Department was incorrect in their assessment of three qualifying deficits at the time of the PAS however; the addition of one additional deficit in the area of dressing would still fall short of the five deficits required for medical eligibility.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was correct in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **uphold** the Department's action to terminate this claimant's services under the Aged Disabled Title XIX (HCB) Waiver program.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of December 2007.

Sharon K. Yoho
State Hearing Officer