



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

February 12, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 1, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue 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 October 5, 2006 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 Hearings Officer to **uphold** the proposed action of the Department to discontinue 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
[REDACTED]
Libby Boggess, BoSS

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

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Claimant,

Action Number: 06-BOR-3367

**v. 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 February 1, 2007 for ■ on a timely appeal filed December 6, 2006. 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 a 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's Witnesses:

[REDACTED] claimant
[REDACTED], Case Manager, [REDACTED]
[REDACTED] claimant's daughter
[REDACTED], [REDACTED]

Department's Witnesses:

Jenni Sutherland, Bureau of Senior Services, by speakerphone
[REDACTED], WVMI nurse

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 - 503.4
- D-2** Pre-Admission Screening, PAS, completed October 5, 2006
- D-3** Eligibility Determination dated October 5, 2006
- D-4** Notice of potential denial dated November 8, 2006
- D-5** Notice of termination dated November 27, 2006
- D-6** Notice of appointment dated September 13, 2006

VII. FINDINGS OF FACT:

- 1) This claimant is a 69-year-old female. She is an active participant in the ADW program. Her medical eligibility was undergoing an annual evaluation on October 5, 2006.
- 2) The claimant has primary diagnosis of insulin dependant diabetes, hyperlipidemia and chronic renal failure. She lives alone in a well maintained apartment complex in a residential area. She receives informal support from her daughter who lives nearby and from homemaker services through [REDACTED].

- 3) A WV Medical Institute (WVMI) Nurse contacted the claimant or her contact person and arranged a date for a new Pre-Admission Screening (PAS) to be completed in the claimant's home on October 5, 2006. WVMI mailed a notice to the claimant on September 13, 2006 advising her that the nurse would be making a home visit on October 5, 2006. This notice also advised that the claimant may want to have someone who is familiar with her medical condition and care present to help answer questions.
- 4) The evaluating nurse completed the PAS in the claimant's home with only her and the claimant present. The nurse determined from the answers given to her by the claimant that the claimant had no qualifying deficits.
- 5) The issues addressed by the claimant's witnesses were in the areas of eating, bathing, grooming, medication administration, and vacating.
- 6) During the evaluation, the claimant advised the nurse that she did not need help with eating. She told the nurse that she did not need help with cutting food on her plate. The claimant's case manager testified that the claimant cannot cut up some kinds of meat. The evaluating nurse testified that the claimant has no functional disability that would prevent her from cutting.
- 7) The claimant told the evaluating nurse during the assessment that she takes a tub bath on her own. She told the nurse that she could get in and out of the tub by holding on to the grab bars for support. She advised the nurse that she bathes alone without the homemaker or anyone else in the apartment. The claimant's homemaker testified that the claimant bathes while sitting on the edge of the tub and that her daughter washes her back for her and dries her toes well due to her diabetic condition. The claimant's daughter testified that her mother does do her bathing alone on the weekends but that she worries about her doing it on her own. When the BoSS representative questioned the claimant as to why she did not tell the nurse that she needed help with her bath she replied that the nurse did not mention it.
- 8) During the evaluation, the claimant advised the evaluating nurse that she is able to care for her own teeth, fingernails, and daily hair care. She told the nurse that she has her hair done by a hairdresser weekly and that a podiatrist cuts her toenails. At the hearing, the case manager testified that the reason the claimant goes to the hairdresser is that she cannot wash her own hair. She also testified that the claimant no longer has the podiatrist cut her toenails and that her daughter cuts them and has for about a year.
- 9) The claimant told the nurse during the evaluation that her daughter sets up her pillbox and insulin syringes weekly and that she is able to open the boxes and take her pills without problems and gives herself the insulin injections. The claimant's witnesses say that they have found pills on the floor that she has dropped and that the neighbor sometimes gives her the insulin injections.
- 10) The evaluating nurse assessed the claimant as needing supervision to vacate safely in the event of an emergency. She based this on her vision problems and her observation of the claimant being unsteady on her feet. The claimant's witnesses believe that due to her being blind in one eye with limited vision in the other that she would need hands on assistance to vacate safely.

11) 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.

12) 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.

13) 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.

14) 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.

- 15) 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 did not determine that the claimant had any qualifying deficits.
- 2) The issues raised at the hearing were in the areas of eating, bathing, grooming, medicating and vacating. None of the witnesses that appeared at the hearing for the claimant was at the home when the evaluation was completed. The claimant provided all of the information during the evaluation and sat quietly at the hearing except for answering one question asked by the BoSS representative. There was no information gathered at the evaluation that indicated what the homemaker might be doing to help the claimant. There was no information gathered at the hearing as to what the homemaker does to help the claimant with her daily care.

- 3) It could be concluded by testimony and evidence that this claimant, due to vision problems and being unsteady on her feet, would required hands on assistance to safely vacate in the event on an emergency. Testimony and evidence did support that she does require physical assistance for grooming. Her daughter trims her toenails and in the event that she was not able to go to the hairdresser, she would need hands on assistance to wash her hair. Testimony regarding medication supports that the claimant can administer her own medication from pre-filled boxes and give herself insulin injections. Some supervision and reminders may be needed to ensure that all medication is taken. Testimony and evidence was not convincing that this claimant needs hands on assistance for bathing or eating.
- 4) There was no orientation or mental problems noted on the PAS or during testimony therefore; it is not reasonable to discard the information this claimant gave to the evaluating nurse during the assessment.
- 5) A deficit for vacating and grooming would still fall short of the requirement of five (5) deficits needed for medical eligibility for the ADW program. 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, 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 Agency's proposed action to discontinue 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 12th Day of February 2007.

Sharon K. Yoho
State Hearing Officer