



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

March 20, 2007



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 16, 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 October 11, 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 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], [REDACTED]
Libby Boggess, BoSS
[REDACTED], WVMI

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

██████████
Claimant,

v.

Action Number: 06-BOR-3368

**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 March 16, 2007 for ██████████ on a timely appeal filed December 4, 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 that this hearing was originally scheduled for February 6, 2007. It was rescheduled at the request of the Claimant for March 16, 2007.

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:

██████████, Case Manager, ██████████

██████████, Homemaker, ██████████

Department's Witnesses:

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

██████████, WVMI nurse, (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.

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 11, 2006

D-3 Notice of Termination dated November 27, 2006

VII. FINDINGS OF FACT:

- 1) This Claimant is a 78-year-old male. He is a recipient of services under the ADW Program. In order to determine his ongoing medical eligibility, an assessment was scheduled for October 11, 2006.
- 2) The Claimant has primary diagnosis of CAD, high blood pressure, osteoarthritis, hyperlipidemia, and hypothyroidism. He lives on first floor apartment building, which is secured building. His wife lives in apartment upstairs. Informal support from wife when needed. Receives 124 service hours per month.
- 3) A WV Medical Institute (WVMI) Nurse completed the Pre-Admission Screening (PAS) assessment in the Claimant's home with her, the Claimant and his homemaker at the time. The nurse determined from the answers given to her by the Claimant that he had three qualifying deficits. These were that the Claimant needs physical assistance with

bathing, grooming, and dressing. (Exhibit D-3) Once the assessment was completed, the PAS and functioning was reviewed with all present, "states that is about right". Denies any disagreements, denies wanting to add. (Exhibit D-2)

- 4) The issues addressed by the Claimant and his witnesses were in the areas of his physical ability to vacate the building in the event of an emergency and bladder incontinence.
- 5) During the evaluation, the Claimant advised the nurse that he gets up often at night to go to the bathroom, "So I don't get much rest at night." States "I have wet self a couple times, but not very often. Reported last time it occurred was about "Couple weeks ago." States occurs about once every 2-3 weeks. Reports having flatulence, States has frequent diarrhea. With diarrhea does get to the bathroom, but admits he has had times of incontinence in underwear. "I usually get to the bathroom, but not always." Reports incontinence with bowels has been about two weeks ago. "Only happens when eat something that gasses me up real bad." Denies is on a weekly basis.
- 6) The nurse evaluated the Claimant's ability to vacate the building in the event of an emergency. She noted that Claimant met her at door of apartment building with cane, Homemaker with him. No hands on assistance noted. Fire exits noted outside door of apartment down hallway. Gait was steady and no impairment of balance noted as ambulated down hallway. Fire exit is approximately 6-8 feet from his apartment door. With no steps to outside yard area. Has three windows in apartment. States I do walk out front to the outside, but states he gets short of breath if walks out and back.
- 7) Testimony from the WVMI nurse revealed that she takes into account not only what she is told but also what she observes during an assessment. With the vacating, the Claimant lives on the first floor of a secured building, near an exit. She reviewed her notes listed in #6 above. The Claimant moved about freely in the home. He reported the last time he used a walker about a month before the assessment. He reported using the railing to get off of the commode. He reported had trouble with his arthritis about once a month. He does not use a wheelchair. Taking all of these factors into consideration, she determined he could exit in an emergency out the side door with supervision. Someone may have to yell at him in the event of an emergency because of his loss of hearing. She does not have anything documented as to the Claimant stating he would go out the window in the event of an emergency. She does document what she hears and observes during an assessment. The WVMI nurse discussed bladder incontinence with the Claimant. He reported the incontinence occurs once every two to three weeks. This was occasional incontinence. She feels he understood her questions although she had to repeat them because of his hearing.
- 8) Testimony from the Claimant revealed he was not using a wheelchair at the time of the assessment. It was being kept in a room in the apartment building. He told the nurse if there was a fire he would get out of the window. He was having accidents with his bladder. There were several days in between accidents.

9) 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.

10) 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.

11) 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.

12) 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).

- | | |
|----------------------------|---|
| 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, dressing and grooming.
- 2) The issues raised at the hearing were in the areas of bladder incontinence and the Claimant's physical ability to vacate the building in the event of an emergency. There was no evidence or testimony presented at the hearing that would change the original determination.
- 3) 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 November 27, 2006 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of March, 2007.

**Margaret M. Mann
State Hearing Officer**