



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 21, 2007



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 14, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny 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 19, 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 action of the Department to deny 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-3406

**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 14, 2007 for ██████████ on a timely appeal filed December 8, 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 discontinued because of an expired PAS.

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:

██████████, Caretaker, ██████████
██████████, Case Manager, ██████████
██████████, Homemaker RN, ██████████

Department's Witnesses:

Jenni Sutherland, LSW, 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 deny services under the Aged/Disabled Waiver (HCB) program as medical eligibility could not be established.

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 19, 2006

D-3 Notice of Potential Denial dated November 14, 2006

D-4 Notice of Termination dated December 1, 2006

VII. FINDINGS OF FACT:

- 1) This Claimant is a 72-year-old female. She was a recipient of services under the ADW Program. The services were discontinued due to an expired PAS. The homemaker had not been in the home since September 8, 2006. In order to determine her medical eligibility, an assessment was scheduled for October 19, 2006.
- 2) The Claimant has primary diagnosis of pelvic fracture, ambulatory dysfunctions, anxiety, depression and abdominal pain. She lives in own home alone, with five steps to enter home. Was getting services 4 hours daily 5 X week.

- 3) A WV Medical Institute (WVMI) Nurse completed the Pre-Admission Screening (PAS) (Exhibit D-2) assessment in the Claimant's home with her, the Claimant, the Case Manager, and Homemaker RN present. (Exhibit D-2) The nurse determined from the answers given to her by the Claimant that she had two qualifying deficits. These were physical assistance with eating and bathing. (Exhibit D-4)
- 4) The issues addressed by the Claimant and her witnesses were in the areas of transferring and not being physically able to vacate in the event of an emergency.
- 5) The Claimant had reported during the assessment that for transferring, she pushes self from sitting position using seat and stands up. Reports she sits in chair with arms, to push off. Walking – does not use walker in home, reports she will hold onto furniture at times when she ambulates in the home, which was not witnessed during the visit, as she walked to kitchen to show medications without holding to anything. Testimony from the WVMI nurse revealed that the Claimant reported she could vacate in the event of an emergency with supervision.
- 6) Testimony from the Claimant revealed that she can't get up out of the chair all of the time. She doesn't use her walker because she has osteoporosis in her back, its deteriorating and she will fall. She has had gallbladder surgery, her stomach goes back and forth, so she uses a broomstick. Her Caregiver pulls her out of the chair when she is there. The doctor has recently given her a cane. She had taken a lot of medication on the day of assessment. She doesn't feel she could get of the house in the event of an emergency.
- 7) Testimony from the Case Manager revealed that she felt the answers the Claimant gave at the time of the assessment were reflected on the PAS. The Claimant tries to maintain as much independence as possible. There are some days she needs more care than others. The Plan of Care does indicate she needs more assistance on some days. The Homemaker RN agreed with the Case Manager that there are days the Claimant needs more assistance.
- 8) 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.

- 9) 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.

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 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.

11) 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-- Level 3 or higher; must be incontinent
 bowel
- f. Continence-- Level 3 or higher; must be incontinent
 bladder
- 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 two (2) qualifying deficits. Those were that she would need physical assistance eating and bathing.
- 2) The issues raised at the hearing were in the areas of transferring and not being physically able to vacate the building in the event of an emergency. While testimony revealed that there are days the Claimant needs more assistance than others, there was no clear evidence or testimony presented at the hearing that would change the original determination.
- 3) As there are only two (2) qualifying deficits, 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.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of March, 2007.

**Margaret M. Mann
State Hearing Officer**