



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

March 20, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 1, 2007. Your hearing request was based on the Department of Health and Human Resources' denial 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 November 14, 2006 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 **reverse** the action of the Department to deny 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
Libby Boggess, BoSS
[REDACTED] WVMH

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

_____,
Claimant,

Action Number: 07-BOR-525

**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 1, 2007 for _____ on a timely appeal filed January 8, 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:

_____, claimant
_____, claimant's husband
_____, claimant's daughter
_____, Friend

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services

_____, WVMI nurse

Observing – Cindy Knighten, B.M.S.

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

All participants presented by Speakerphone

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 November 14, 2006
- D-3** Evaluating nurse's notes
- D-4** Eligibility Determination dated November 14, 2006
- D-5** Notice of potential denial dated December 14, 2006
- D-6** Notice of termination dated January 3, 2007

VII. FINDINGS OF FACT:

- 1) This claimant is a 70-year-old female whose application for Aged Disabled waiver service was denied due to medical eligibility not met.
- 2) The claimant has primary diagnosis of Insulin Dependant Diabetes, Legally Blind, COPD with O2, Atherosclerosis with Angioplasty, Hypertension, Hiatal Hernia, and Hysterectomy.

- 3) A WV Medical Institute (WVMI) Nurse contacted the claimant or her contact person and arranged a date for a Pre-Admission Screening (PAS) to be completed in the claimant's home on November 14, 2006. WVMI mailed a notice to the claimant advising her that the nurse would be making a home visit on November 14, 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 the claimant and her daughter present. The nurse determined from the answers given to her by the claimant and the claimant's daughter that only four qualifying deficits could be awarded. Those qualifying deficits were in the areas of bathing, dressing, grooming and incontinence.
- 5) The issues addressed by the claimant's witnesses were in the areas of vacating and medicating.
- 6) During the evaluation, the claimant advised the nurse that she would be able to vacate in the event of an emergency. She told the nurse that there were three entrances and that she could get to one of them without assistance. The claimant ambulates without assistance and transfers by pushing herself up using arms of chairs. She uses a blind stick when she is outside of the home. Her daughter testified that she might need help down the steps outside of the home if she had to vacate using a door that has steps.
- 7) The claimant told the evaluating nurse during the assessment that her husband puts her pills in a cup and hands the cup to her so she can take her medication. The nurse testified that the client demonstrated good handgrip and that this led her toward the determination that the claimant could take her medication without assistance. The claimant testified that she takes 13 different pills and that her husband puts them in a cup and hands them to her more than one time per day. She stated that if he were to put the cup in front of her that she might be able to feel it to take the pills. Her husband testified that if he were not there to hand her the cup she would not be taking her medication. The Department's representative stated that there would be no difference in feeling for a pill cup than feeling for a coffee cup and that the husband putting the pill cup in his wife's hands is probably out of courtesy.
- 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--
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.

- 12) 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 four qualifying deficits in the areas of bathing, dressing, grooming and incontinence.
- 2) The issues raised at the hearing were in the areas of vacating and medicating. The information gathered by the evaluating nurse during the assessment and the testimony provided at this hearing regarding vacating clearly shows that the claimant could vacate the home in the event of an emergency without hands on assistance. She does not require hands on assistance to transfer or to ambulate and there was no documentation to indicate any mental disabilities. Her blindness does not prevent her from ambulating within the home or to the exits of the home.
- 3) The information provided to the evaluating nurse during the assessment does indicate that this claimant requires someone to hand her the medication that she must take. There was no testimony given to confirm that the evaluating nurse had asked the claimant if she could take the medication without her husband handing it to her. The nurse made the assumption that since the claimant demonstrated a good handgrip that she did not need the medication handed to her. This Hearing Officer does not share the Department's opinion that there would be no difference between feeling for a cup of pills and for a cup of coffee. The contents of the coffee cup could be easily determined before or after a short sip. If this claimant dumped a cup, full of pills in her mouth that were not suppose to be taken by her or taken at that time, the consequences of this act would be much greater than a sip of the wrong beverage. The husband has made the decision to place the cup in his wife's hand and this clearly demonstrates that he believes this is necessary to ensure that his wife is properly medicated.

- 4) The Department should have assessed a deficit for medication, which would cause the claimant to have the required five (5) deficits needed for medical eligibility for the ADW program.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was incorrect in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **reverse** the Department's action to deny this claimant services under the Aged Disabled Title XIX (HCB) Waiver program. I further rule that the Department include a deficit for medication and assign the associated points when assessing the level of care criteria.

IX. 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.

**Sharon K. Yoho
State Hearing Officer**