



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Joe Manchin III
Governor

Office of Inspector General
Board of Review
PO Box 29
Grafton WV 26354

Martha Yeager Walker
Secretary

May 14, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing convened March 28, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits/services under the Medicaid, Aged/Disabled Title XIX (Home & Community Based) Waiver 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.

Medicaid, Aged/Disabled (HCB) Title XIX Waiver is granted to those individuals who continue to meet all eligibility requirements. Eligible individuals are those who qualify medically for a nursing facility level of care but have chosen the waiver program as a means to remain in their home. In order to medically qualify for Aged/Disabled Waiver services an individual must have a total of five (5) qualifying deficits in specific categories of nursing services. [Aged/Disabled (HCB) Services Manual § 503].

The information submitted at your hearing failed to establish a minimum of 5 qualifying deficits, demonstrating that you do not require the *level of care* commonly provided in a nursing facility.

It is the decision of the State Hearing Officer to **uphold** the action of the agency to deny your application for benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the February 1, 2007 notification.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Boggess, BoSS
[REDACTED], WVMI



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

Claimant,

v.

Action Number 07-BOR- 756

**West Virginia Department of Health and Human Resources,
Respondent.**

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 9, 2007 for _____. 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. This fair hearing was convened on March 28, 2007 on a timely appeal requested February 7, 2007 and received by the State Hearings Examiner February 28, 2007.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) 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

_____, CM, CCS

Kay Ikerd, RN, Bureau of Senior Services (by phone)

_____, RN, West Virginia Medical Institute (by phone)

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the claimant was medically eligible for services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual §503- 503.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

D-1- A/D Waiver Manual §503- 503.4.

D-2- WVMi Independent Review (PAS), 12/11/06

D-3- Notification, 1/11/07 (Potential Denial)

D-4- Notification, 2/1/07 (Termination/Denial)

D-5- WVMi Independent Review (PAS), 12/11/06

D-6- Statement, 9/3/06, _____, MD

D-7- ADW referral with diagnosis, _____ MD, 10/12/06

D-8- Statement, _____, MD, 1/23/07

VII. FINDINGS OF FACT:

1) The claimant's A/D Waiver application was referred to the agency October 24, 2006 and a WVMi Independent Review (D-2) was completed by the WVMi on December 11, 2006.

2) WVMi determined that the claimant was not medically eligible for Waiver services and a notification of potential denial was mailed by the agency January 11, 2007.

3) The agency mailed a final notification of denial to the claimant February 1, 2007.

4) A hearing request dated February 2, 2007 was received by the Bureau for Medical Services (BMS) February 7, 2007 and by this examiner February 28, 2007.

- 5) During the hearing, exhibits as noted in Section VI above were accepted.
- 6) Testimony was heard from the parties listed in section III above. All persons giving testimony were placed under oath.
- 7) On the basis of the medical evaluation completed November 1, 2005 and testimony of the WVM RN who completed the assessment, 2 qualifying deficits were acknowledged- vacating and grooming.
- 8) The agency's findings were challenged on behalf of the claimant in the areas of continence, dressing and bathing. Sworn testimony offered by the claimant reveals that the claimant sometimes needs assistance with dressing- tying his shoes and pulling on his support hose. He has some urinary dribbling as a result of prostate surgery but only occasionally voids completely. Bathes by showering, uses environmental objects for assistance can wash completely with exception of his back.
- 9) The Aged/Disabled Home and Community Based Services Manual § 503 and 503.4 direct that applicants and recipients for the ADW program must meet all criteria to be eligible for the program including medical and financial criteria. Additionally, annual reevaluations for medical necessity for each ADW recipient must be conducted.
- 10) The Aged/Disabled Home and Community Based Services Manual § 503 reveals that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care.
- 11) The Aged/Disabled Home and Community Based Services Manual § 503.2 Medical Criteria directs that an individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of assessment elements on the medical evaluation- **Decubitus** - Stage 3 or 4; **Ability to vacate a building**- in the event of an emergency, the individual is mentally or physically unable to vacate a building. (Independently or "with supervision" are not considered deficits.); Functional abilities of individual in the home – **Eating** (physical assistance to get nourishment, not preparation) **Bathing, Grooming, Dressing** -all Level 2 or higher (physical assistance or more), **Continence** - Level 3 or higher- must be total incontinent; **Orientation** (totally disoriented, comatose), **Transferring**- level 3 or higher (one or two-person assistance in home), **Walking**- Level 3 or higher (one-person assistance in home), **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) ; **Skilled needs**- in at least one of the following- suctioning, tracheostomy, ventilator, parenteral fluids, sterile dressings, irrigations; **Ability to self- medicate**- individual is not capable of administering his/her own medication.

VIII CONCLUSIONS OF LAW:

- 1) Policy relating to the Aged/Disabled Home and Community Based Services program directs that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care. Eligibility is determined based on an assessment of the individual's functional ability in a number of designated elements pertaining to the activities of daily living. Evidence reveals that such an evaluation was completed by the West Virginia Medical Institute on December 11, 2006. This evaluation found 2 qualifying deficits in the categories of vacating and grooming.
- 2) Deficits are derived from a combination of the aforementioned assessment elements (VII #11). The claimant's case consisted of the existence of qualifying deficits in the areas of bathing, dressing and continence.
- 3) In order to determine a qualifying deficit in the category of **Continence** it must be shown that the individual is totally incontinent. The claimant testified that while he "dribbles" often and he only occasionally completely voids and is soaked. Granting of a qualifying deficit here would entail total incontinence; on this basis evidence fails to establish a qualifying deficit in Continence.
- 4) In order to determine a qualifying deficit in the category of **Bathing** it must be shown that the individual requires at a minimum "physical assistance" or hands on assistance to provide adequate hygiene. The claimant testified that he showers and is able to wash himself. It appears that the need for assistance in this category is minimal and assignment of a qualifying deficit inappropriate.
- 5) In order to determine a qualifying deficit in the category of **Dressing** it must be shown that the individual requires at a minimum "physical assistance" or hands on assistance to appropriately dress. The claimant testified that he sometimes requires assistance with tying his shoes and pulling on hose. He is able to put on his pants and shirt by sitting. It appears the granting of a qualifying deficit here is justified based on the claimant medical need for the support hose and his need for assistance is putting them on.
- 6) Policy provides that an individual must have a minimum of five deficits to qualify medically for the ADW Program. The medical assessment established 2 qualifying deficits. Evidence offered at the hearing provided only 1 additional deficit for a total of 3. Medical eligibility for the program cannot therefore be established.

IX. DECISION:

The agency's determination as set forth February 1, 2007 notification is upheld. This hearing established only 3 fully qualifying deficits failing to establish medical eligibility for the ADW program.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

ENTERED this 14th Day of May 2007.

Ron Anglin
State Hearing Examiner

CLAIMANT'S RECOURSE TO ADMINISTRATIVE HEARING DECISION
For
Public Assistance Hearings,
Administrative Disqualification Hearings, and
Child Support Enforcement Hearings

A. CIRCUIT COURT

Upon a decision of a State Hearing Officer, the claimant will be advised he may bring a petition in the Circuit Court of Kanawha County within four months (4) from the date of the hearing decision.

The Court may grant an appeal and may determine anew all questions submitted to it on appeal from the decision or determination of the State Hearing Officer. In such appeals a certified copy of the hearing determination or decision is admissible or may constitute prima facie evidence of the hearing determination or decision. Furthermore, the decision of the circuit Court may be appealed by the client or petitioner to the Supreme Court of Appeals of the State of West Virginia.

B. THE UNITED STATE DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATE DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.