



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 6, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 28, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Aged & Disabled (HCB) Title XIX Waiver Services 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 Aged/Disabled Waiver 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 a 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 Section 503]

The information submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services provided through the Medicaid, Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
BoSS
Nisar Kalwar, Esq., BMS
Charles Rogers, Esq., Legal Aid of WV
First Care Services

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

_____,

Claimant,

v.

Action Number: 07-BOR-816

**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 July 6, 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 June 28, 2007 on a timely appeal filed February 26, 2007.

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
Charles Rogers, Esq., Legal Aid of WV
_____, Homemaker RN
_____, Homemaker
_____, CM, LSW, First Care Services
Nisar Kalwar, Esq., BMS
Jenni Sutherland, LSW, BoSS
_____, RN, WVMI

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Agency was correct in its decision to propose termination of the Claimant's benefits and services provided through the Aged & Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 503, 503.1, 503.1.1 and 503.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 503
- D-2 Pre-Admission Screening (PAS) assessment completed on January 18, 2007
- D-3 Notice of Potential Denial dated January 30, 2007
- D-4 Notice of Termination/Denial dated February 15, 2007

VII. FINDINGS OF FACT:

- 1) On January 18, 2007, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on 1/18/07}.

- 2) On or about January 30, 2007, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2.

Based on your PAS you have deficiencies in only 2 areas – Bathing and Grooming.

The Claimant was notified that she could provide additional information regarding her medical condition within the next 2-weeks for consideration before a final determination was made, however, if no additional information is received within 2 weeks from the date of the notice, she will receive a denial notice.

It should be noted that no additional information was received.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated February 15, 2007 (Exhibit D-4). This notice states, in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 2 areas – Bathing and Grooming.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) The Claimant contends that she should have been awarded a deficit in *Vacating a building*, *Dressing* and *Continence* and as a result, she should be found medically eligible to participate in the ADW Program.

- 5) The Claimant contends that a deficit should be awarded in the area of *vacating a building* because she lives on the second floor of a building that requires her to negotiate 13 steps. The medical conditions cited include two hip replacements, one leg is 1 inch shorter than the other, she experiences pain in her shoulders related to her Osteoarthritis and she has chronic back pain due to degenerative disc disease. The Department acknowledged the Claimant's medical conditions and noted that they are documented in the medical assessment (Exhibit D-2), however, these conditions do not limit her mobility to the point that she requires physical assistance with vacating. The WVMI RN testified that she observed the Claimant go up-and-down stairs during the assessment when she arrived at the Claimant's home and when she left.

The WVMI RN noted the following information in Exhibit D-2, page 5 of 5 (Transferring/Walking/Wheeling):

Member has crutch arm braces which she can use if she is having a more difficult day or going out. She has a cane which she uses in the home as well. She stated she has joined a walk club at mall to try and give herself a little more exercise so she can strengthen her muscles more. Member also stated she has a wheelchair she may use when she goes out for long distances but she tries to walk as much as she can. She stated she goes up and down stairs on her own and stated that she felt in emergency she would be able to make it down the stairs on her own to exit the home. When I left she walked down the stairs half w/behind me and did so very steadily. She then turned mid-step as I went out the door and walked back up on her own and did so w/o difficulty.

While it is clear that the Claimant's medical conditions adversely affect her mobility and that she must sometimes rely on an assistive device, the evidence overwhelmingly indicates that the Claimant is physically capable of vacating her building in the event of an emergency. **A deficit cannot be awarded in vacating a building.**

- 6) The Claimant testified that she needs assistance with *dressings* as she suffers from Carpal Tunnel Syndrome in her right arm and she is unable to lift her arms over her head due to the arthritis in her shoulders. Her homemaker must assist her with putting on her bra and she needs assistance with buttons and shirts that go over her head. According to Exhibit D-2, the Claimant reported during the assessment that she uses an assistive device to help her put on socks and a grabber to pull pants and underwear on when no one is there to help her. According to Exhibit D-2, the Claimant showed the WVMI RN the assistive devices she uses when she must dress herself and also indicated that she can fasten her front closure bra.

While the evidence received at the hearing is in conflict with the information received during the assessment, testimony received in support of a deficit in dressing from the Claimant and her homemaker are consistent with the limitations that would be expected from the Claimant's medical conditions. The testimony received by and on behalf of the Claimant is credible and clearly demonstrates a deficit in dressing. **A deficit in dressing is therefore awarded.**

- 7) In order for an individual to qualify for a deficit in *incontinence*, the WVMI RN testified that the individual must have episodes of incontinence at least three or more times per week. These episodes, according to the WVMI RN, must be a complete loss of bladder control. The Claimant testified that she used to wear the pads all the time but she is now on prescription Oxybuten. She does occasionally wear incontinence pads when she goes out and stated that when she has an accident, she must change her underwear.

Documentation found in Exhibit D-2, page 5 of 5 states – “Member stated that sometimes she dribbles before making it to restroom. She denied losing complete control of bladder. She stated so far she has been able to make it to restroom w/o losing complete control just occasional dribbling. Member does not wear pads. She denies any accidents w/bowels.”

It is unclear if an individual must completely void their bladder in order for an episode to qualify as incontinence, as indicated by the WVMI RN, however, the Claimant is taking prescription medication to control this condition and she indicated in her testimony that she only wears incontinence pads “occasionally.” More importantly, there was no testimony received to indicate that the Claimant suffers from episodes of bladder incontinence three (3) or more times per week. **Based on the evidence, a deficit cannot be awarded in the area of Continence.**

- 8) Aged/Disabled Home and Community-Based Services Manual Section 503 (D-1) - Program Eligibility for Client:

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 503.1.1 – Purpose: The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing clients are medically eligible based on current and accurate evaluations.
- B. Each applicant/client determined to be medically eligible for A/DW 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.

10) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 503.2 (D-1): An individual must have five (5) deficits on the Pre Admission Screening (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 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
Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
Bathing ----- Level 2 or higher (physical assistance or more)
Dressing ---- Level 2 or higher (physical assistance or more)
Grooming--- Level 2 or higher (physical assistance or more)
Continence (bowel, bladder) -- Level 3 or higher; must be incontinent
Orientation-- Level 3 or higher (totally disoriented, comatose)
Transfer----- Level 3 or higher (one-person or two-person assistance in the home)
Walking----- Level 3 or higher (one-person assistance in the 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)

#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 Individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that an individual must demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded two (2) deficits on a PAS completed by WVMi in January 2007 – Bathing and Grooming.
- 3) The evidence submitted at the hearing identifies one additional deficit – Dressing (Level-2, physical assistance required).

- 4) Whereas the Claimant demonstrates only three (3) program qualifying deficits, continued medical eligibility for participation in the Aged/Disabled Waiver Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's benefits and services through the Medicaid, 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 6th Day of July, 2007.

Thomas E. Arnett
State Hearing Officer