



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 7, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 11, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your services under the Aged and Disabled Waiver Services Program.

In arriving at a decision, the State Hearings 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 and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office or the Social Security Administration (SSA) if an active SSI (Supplemental Security Income) recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS).

The information submitted at your hearing revealed: You do not meet the medical eligibility criteria for continued coverage under the Aged and Disabled Waiver Services Program.

It is the decision of the State Hearings Officer to **uphold** the **proposal** of the Department to terminate your services.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Mr. Nisar Kalwar, Assistant Attorney General – B. M. S.
Ms. Libby Boggess, RN – Bureau of Senior Services
Ms. [REDACTED] RN – West Virginia Medical Institute
Mr. [REDACTED] Esq. – Legal Aid of West Virginia Inc.
Ms. [REDACTED] Case Manager – First Care Services, Inc.

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

_____,
Claimant,

v. **Action Number: 07-BOR-850**

**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 June 7, 2007 for Ms. _____ 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 May 11, 2007 on a timely appeal filed February 26, 2007.

It should be noted here that the Claimant was receiving continued benefits under the Aged and Disabled Waiver Services Program, and she was represented by Counsel. A pre-hearing conference was not held between the parties prior to the hearing.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver Services Program 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 B. Rogers, Esq. – Legal Aid of West Virginia, Inc.
_____, Claimant’s Son
[REDACTED] Case Manager – First Care Services, Inc.
[REDACTED] Home Maker – Pro Careers
Nisar A. Kalwar, Assistant Attorney General – Bureau for Medical Services*
Libby Boggess, RN – Bureau of Senior Services (BoSS)*

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

* Participated by conference call.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Does Ms. _____ continue to meet the medical eligibility criteria for the Aged and Disabled Waiver Program?

V. APPLICABLE POLICY:

Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services Chapters 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS; 503.1 MEDICAL ELIGIBILITY; 503.1.1 PURPOSE; and 503.2 MEDICAL CRITERIA

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department’s Exhibits:

- D-1 Chapter 500 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services Chapters 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS; 503.1 MEDICAL ELIGIBILITY; 503.1.1 PURPOSE; and 503.2 MEDICAL CRITERIA
- D-2 Pre-Admission Screening (PAS) Form dated 01/16/07
- D-3 Termination Letter dated 02/20/07
- D-4 Medical Necessity Requests dated 09/08/06 and 11/13/06 respectively
- D-5 Bureau for Medical Services Closing Argument

Claimants’ Exhibits:

- C-1 Legal Aid of West Virginia Inc. Closing Argument

VII. FINDINGS OF FACT:

- 1) This issue involves the proposed termination of services under the Aged and Disabled Waiver Services Program.

- 2) The process for evaluating the Claimant began with two (2) Medical Necessity Evaluation Requests dated September 8, 2006 and November 13, 2006, respectively from two separate physicians (Exhibit D-4). The requests were submitted by the Claimant's physician's to the West Virginia Medical Institute.
- 3) The Medical Necessity Evaluation Request dated September 8, 2006 listed the Claimant's Diagnoses as Mild Mental Retardation; Type II Diabetes Mellitus; and Obesity. The physician also wrote "I don't think she needs services." The BoSS RN testified that the physician's additional comments did not influence the PAS.
- 4) The Medical Necessity Evaluation Request dated November 13, 2006 was prepared by another physician. He listed the Claimant's Diagnoses as Depression; Anxiety; Asthma; NIDDM – Type II; Dyslipodemia; Hypothyroidism; GERD; OA; and "Dislocated disc and 2 broken vertebra per patient."
- 5) The assessment (PAS) was completed on January 16, 2007. Those present during the assessment were the Claimant; her Husband; her Son; and the BoSS RN (Exhibit D-2).
- 6) The BoSS RN determined through her evaluation that the Claimant only had two (2) of the five required deficits for Waiver Services. The deficits were in the areas of: Physically unable to vacate the building and Bathing. It should be noted that the evaluation was based only on the Claimant's functional levels on the day of the visit.
- 7) A Denial Letter was issued to the Claimant on February 20, 2007. The letter stated in part, "An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program."
- 8) At the hearing, the BoSS RN explained the policy (Exhibit D-1). There were no questions from the participants.
- 9) The area of disagreement between the parties was the Claimant's abilities under Question #26 (a) Eating; (c) Dressing; (d) Grooming; (e) Bladder Incontinence; and (i) Walking.
- 10) The Case Manager appearing at the hearing is not assigned to the Claimant. She was appearing on behalf of the assigned Case Manager who was on sick leave.
- 11) There was no supporting documentation to support a deficit for Eating.
- 12) The Claimant testified that because of her Osteoarthritis, she needs assistance with her undergarments. This is credible testimony and one (1) deficit will be awarded for Dressing.
- 13) The Claimant testified that her husband must assist her with grooming. She has trouble with her left arm and cutting her toe nails. The testimony and PAS from the BoSS RN supports the Claimant's claim when she wrote, "It hurts to raise my arms." The Claimant's son testified that his father helped his mother with dressing and grooming before the BoSS RN arrived. This is credible testimony and one (1) deficit will be awarded for Grooming.

- 14) The Claimant and those present did not provide any relevant testimony about Bladder Incontinence, other than an isolated incident at Wal-Mart. A deficit will not be awarded in the area of Bladder Incontinence.
- 15) The Claimant testified that she occasionally needs assistance with Walking because of falls. Her physician prescribed a walker, and she uses a cane in the home when necessary. She also testified that either her husband or Home Maker always follow her to the bathroom.
- 16) The Claimant's testimony supports the BoSS RN's assessment of the use of a Supervised/Assistive Device for Walking. A deficit will not be award in the area of Walking.
- 17) 503 MEMBER ELIGIBILITY AND ENROLLMENT PROCESS (Exhibit D-1):

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the Social Security Administration (SSA) if an active SSI (Supplemental Security Income) recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

- 18) 503.1 MEDICAL ELIGIBILITY (Exhibit D-1):

A QIO under contract to BMS determines medical eligibility for the ADW Program.

- 19) 503.1.1 PURPOSE (Exhibit D-1):

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 service needs.

- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

20) 503.2 MEDICAL CRITERIA (Exhibit D-1):

An individual must have five (5) 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.

<u>Section</u>	<u>Description of Deficits</u>
#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
a.	Eating Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing Level 2 or higher (physical assistance or more)
c.	Dressing Level 2 or higher (physical assistance or more)
d.	Grooming 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 assistance in the home)
i.	Walking Level 3 or higher (one-person assistance 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: (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.

- 21)** Attorney's for the Bureau for Medical Services and Legal of Aid of West Virginia, Inc. submitted Closing Argument's, and are made a part of the record (Exhibits D-5 and C-1).

VIII. CONCLUSIONS OF LAW:

- 1)** The January 16, 2007 PAS was based on the Claimant's functional levels on the day of the BoSS RN's visit.

- 2) An individual must have five (5) deficits on the Pre-Admission Screening Form (PAS), to qualify medically for the ADW Program.
- 3) The Claimant has a total of four (4) deficits in the areas of: Vacating the building; Bathing; Dressing; and Grooming.
- 4) The testimony and medical documentation does not support additional deficits in the area of Eating; Bladder Incontinence; and Walking.
- 5) The Claimant does not qualify medically for continued services under the ADW Program.

IX. DECISION:

It is the decision of this State Hearing Officer to uphold the proposal of the Department to terminate the Claimant's services for Aged and Disabled Waiver Services.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of June, 2007.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer