



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 Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 6, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny you 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 coverage under the Aged and Disabled Waiver Services Program.

It is the decision of the State Hearings Officer to **uphold** the **action** of the Department to deny you services.

Sincerely,

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

cc: State Board of Review
Ms. Kay Ikerd, RN – Bureau of Senior Services
Ms. [REDACTED] RN – West Virginia Medical Institute
_____ POA

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

_____,
Claimant,

v. **Action Number: 07-BOR-928**

**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 Mr. _____. 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 6, 2007 on a timely appeal filed March 12, 2007.

It should be noted here that the Claimant was not receiving benefits under the Aged and Disabled Waiver Services Program, and he was not 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

_____. Power Of Attorney/Cousin

Kay Ikerd, RN – Bureau of Senior Services (BoSS)

_____, RN - West Virginia Medical Institute (WVMI)

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

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Does Mr. _____ 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 01/15/07
- D-3 Potential Denial Letter date 01/17/07
- D-4 Additional Medical Documentation dated 01/23/07
- D-5 Termination Letter dated 02/08/07

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) This issue involves the denial of services under the Aged and Disabled Waiver Services Program.
- 2) The assessment (PAS) was completed on January 15, 2007. Those present during the assessment were the Claimant; his Cousin/POA; and the BoSS RN (Exhibit D-2).

- 3) The BoSS RN determined through her evaluation that the Claimant only had four (4) of the five required deficits for Waiver Services. The deficits were in the areas of: Physically unable to vacate the building; Eating; Grooming; and Dressing. It should be noted that the evaluation was based only on the Claimant's functional levels on the day of the visit (Exhibit D-2).
- 4) A Potential Denial Letter was issued to the Claimant on January 17, 2007 (Exhibit D-3). The letter allowed the Claimant to submit additional medical information within the next 2 weeks.
- 5) The Claimant's physician faxed a letter to WVMi on January 23, 2007 (Exhibit D-4). The physician stated in part, "I would ask that this patient be revisited with specific attention being given to his ability to bath him self, walk safely without assistance and continence issues."
- 6) The WVMi RN reviewed the physician's letter on February 2, 2007. It did not change the outcome of the assessment.
- 7) A Denial Letter was issued to the Claimant on February 8, 2007 (Exhibit D-5). 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). At the request of the Power of Attorney, the BoSS RN further explained the definitions of Incontinence and Orientation.
- 9) According to the physician's letter, the areas of disagreement were the Claimant's abilities under Question #26 (b) Bathing; (e) Bladder Incontinence; (f) Bowel Incontinence; and (i) Walking.
- 10) The WVMi RN reviewed her overall comments on the PAS as it relates to the areas of disagreement. According to the PAS, the Claimant and POA denied any problems in the areas of Bathing; Bladder and Bowel Incontinence; and Walking.
- 11) The Claimant and POA did not provide any testimony to dispute the WVMi RN's testimony for the period of January 2007. The POA testified that the Claimant's health has deteriorated since the assessment.
- 12) The Claimant does not qualify for additional deficits in the areas of Bathing; Bladder and Bowel Incontinence; and Walking.
- 13) 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.

14) 503.1 MEDICAL ELIGIBILITY (Exhibit D-1):

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

15) 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.

16) 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. Contenance, bowel Level 3 or higher; must be incontinent.
 - f. Contenance, 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.

VIII. CONCLUSIONS OF LAW:

- 1) The January 15, 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; Eating; Dressing; and Grooming.
- 4) The testimony and medical documentation does not support additional deficits in the area of Bathing; Bladder Incontinence; Bowel Incontinence; and Walking.
- 5) The Claimant does not qualify medically for services under the ADW Program.

IX. DECISION:

It is the decision of this State Hearing Officer to uphold the action of the Department to deny the Claimant services under the Aged and Disabled Waiver Services Program.

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