



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 16, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 26, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of your medical eligibility under 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]

Information submitted at your hearing reveals that you do meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to deny your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI

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

_____,

Claimant,

v.

Action Number: 08-BOR-1570

**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 September 26, 2008 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 September 26, 2008 on a timely appeal filed June 16, 2008.

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
_____, Claimant's daughter-in-law

Kay Ikerd, BOSS - participated telephonically by Leaderphone
Traci Gillispie, WVMI, participated telephonically by Leaderphone

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in its proposal to deny benefits under the Aged/Disabled Home and Community-Based Waiver 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 April 24, 2008
- D-3 Notice of Potential Denial dated April 25, 2008
- D-4 Notice of Denial dated May 12, 2008
- D-5 Request for Hearing form

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an initial evaluation for eligibility under the Title XIX Aged and Disabled Waiver Program during the month of April 2008.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on April 24, 2008 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified the Claimant received four (4)

deficits on the Pre-Admission Screening (PAS) assessment in the areas of eating, bathing, grooming, and dressing.

- 3) The Department sent a Notice of Potential Denial (D-3) on April 25, 2008 addressed to Dr. _____, at [REDACTED] advising that the Claimant had two weeks to submit additional medical information for consideration by WVMI. No additional information was submitted. No evidence was provided to show the Claimant received a copy of this notice.
- 4) WVMI denied the Claimant (D-4), and the Claimant requested a hearing (D-5). The Department received the request on June 16, 2008.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following area:

Vacating a Building: The Claimant was rated as being able to vacate a building in the event of an emergency “independently”. The WVMI nurse recorded the following on the PAS:

Applicant reports she sees “visions” describes seeing people in the air, sometimes animals, family who have passed away. Also reports applicant has intermittent periods of disorientation – [REDACTED] reported her related symptoms have been forgetfulness related to people....stated she is in the early stages of dementia...affecting her short term memory....also reported applicant’s mother had Alzheimer’s. Applicant reports eh normally vacates the home under normal circumstances, independently, and uses her cane when going down the steps...she reported she feels she could vacate her home in an emergency independently [sic] as well...she stated “I would get out even if I had to crawl. I observed applicant transfer and ambulate today without difficulty....states she does not need to use her cane on a daily basis. Denies requiring physical assistance with transferring or ambulating. Therefore, I do feel this applicant could vacate independently.

Witnesses testified that the Claimant has panic attacks and would not be able to get out of the home in an emergency, due to her mental issues. The Claimant is prescribed a low dose of Aricept which is prescribed for dementia.

- 6) 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.
- 7) 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.
- 8) 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 dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received four (4) deficits in April 2008 in conjunction with her initial Aged/Disabled Waiver Program evaluation.
- 3) The totality of evidence and testimony presented during this hearing support the finding of an additional deficit in the area of “vacating a building in the event of an emergency”. Although it is clear that the WVMi nurse documented the claimant can, under normal circumstances, physically leave her home with little difficulty, it is apparent that the Claimant has mental issues that could interfere with her exiting her home “independently” in the event of an emergency. The Claimant has a documented diagnosis of dementia, as well as a history of disorientation, panic attacks, and seeing “visions”.
- 4) The required five (5) deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency’s proposal to deny the Claimant’s medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. I order that the Claimant also be assessed points in relation to the deficit awarded in arriving at a level of care determination.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th day of October, 2008

**Cheryl Henson
State Hearing Officer**