



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 28, 2009

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 21, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits 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 501]

Information submitted at your hearing reveals that you meet 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 terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CCIL
West Virginia Advocates

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

_____,

Claimant,

v.

Action Number: 08-BOR-1798

**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 January 28, 2009 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 January 21, 2009 on a timely appeal filed July 25, 2008 and received by the Hearing Officer on September 2, 2008. The hearing was originally scheduled for November 25, 2008, but was rescheduled at the request of the Claimant. The hearing was then scheduled for January 8, 2009, but was rescheduled at the request of the Claimant.

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:

[REDACTED], Claimant (participated telephonically)
[REDACTED] Advocate, West Virginia Advocates
[REDACTED] RN, Case Manager, Coordinating Council for Independent Living
Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)
Melody Lehosit, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a 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 terminate benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) completed on June 24, 2008
- D-3 Notice of Potential Denial dated June 26, 2008
- D-4 Letter from Dr. [REDACTED]
- D-5 Denial notice dated July 16, 2008
- D-6 Hearing Request

Claimant's Exhibits:

- C-1 Letter from Dr. [REDACTED] dated December 12, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical reevaluation to determine if she continues to meet medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on June 24, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified four (4) qualifying

deficits for the Claimant in the areas of physical assistance with bathing, dressing and grooming, and continence.

- 3) The Claimant was sent a Notice of Potential Denial on June 26, 2008 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. Additional information was submitted (D-4), however the documentation failed to change the PAS findings.
- 4) The Claimant was sent a final denial notice on July 16, 2008 (D-5).
- 5) During the hearing, the Claimant and her witnesses contended that additional deficits should be awarded in the following areas:

Inability to vacate the building in the event of an emergency and one-person assistance with transferring- The Claimant has been diagnosed with rheumatoid arthritis, pulmonary fibrosis, fibromyalgia and Sjogren's Syndrome (a disorder associated with rheumatoid arthritis) as documented in a December 12, 2008 letter (C-1) from Dr. [REDACTED] the Claimant's rheumatologist.

The letter states, in part:

I have reviewed the termination letter and Pre-Admission Screening (PAS) dated 6/24/08 [sic] It is my opinion that during this time frame _____ should have also been awarded the areas of transferring and vacating the building.

_____ reports that several days per week she requires physical assistance to transfer out of her bed and out of a chair and that just using her walker or chair arms is not enough. _____ was _____ and is still only able to walk short distances with the use of her walker and she continues to use oxygen. It is very difficult for _____ to vacate a building using her walker and pull her oxygen without actual "physical assistance", not just "supervision" as indicated on page the [sic] 6/24/08 PAS. _____'s medical conditions listed above cause her debilitating fatigue and joint pain. Her ability to walk and transfer from day to day can change pending on several different variables such as the previous day's activity levels, weather or her health in general.

The Claimant testified that she requires physical assistance with transferring and walking at times. She testified that there are times when she would be unable to transfer from a piece of furniture if no one was in her home to assist her. The Claimant, who takes oxycodone for pain four times daily, stated that her medical conditions make it difficult for her to get out of bed in the morning and she would be unable to get out of bed quickly if an emergency situation occurred in the middle of the night. She believes she would be unable to vacate her home during an emergency and would have to be carried to safety. The Claimant also testified that she would require assistance in taking her oxygen out of the home should an emergency situation occur.

The Coordinating Council for Independent Living Case Manager, who was present at the Claimant's home when the PAS was completed, testified that the Claimant normally uses furniture to transfer, but there are days when she has to be physically assisted from her bed, chairs and the toilet due to her medical conditions.

The WVMI Nurse testified that the Claimant was rated as using a supervised/assistive device for transferring and as being able to vacate her home with supervision in the event of an emergency. The nurse stated that there were conflicting reports from the homemaker and the Claimant concerning whether the Claimant had been out of her home visiting her mother just prior to the nurse's arrival on the date of the assessment. The nurse testified that she had called the Claimant to determine whether her appointment time could be moved forward and the homemaker had told her the Claimant was out at that time. For this reason, the nurse did not allow any additional deficits after receiving a letter from Dr. [REDACTED] (D-4) on July 8, 2008 indicating that the Claimant would require assistance in vacating.

The nurse had written the following information on the PAS in regard to transferring and vacating:

Observed chairs of arm and walker use [sic] as assistive device with transfer from sitting to standing and back to sitting. Assistive device required for transfers.

Requires supervision in vacating due to assistive device with transfers, frequent O2 use and reported dyspnea. Self reports has left [sic] alone with portable O2 previously, thought not often. Member reports when she leaves someone is usually with her, like her husband or sister but at times she has left alone. When O2 goes with her it is pulled behind her, portable tank. Denies exiting home today. Reports has driven self a few months ago. Demonstrated ambulation to near kitchen area. In homemaker interview reports they were on their way in when I called. Assessed as requiring supervision in vacating.

The Claimant testified that she rarely leaves her home unaccompanied and does not recall going out on the date of the assessment.

While the WVMI Nurse allegedly received conflicting reports concerning the Claimant's whereabouts just prior to the assessment, the Claimant testified that she does not recall being out of the home on that date. In light of the Claimant's medical diagnoses, it is reasonable to believe that her abilities can vary on a daily basis. The Claimant's physicians provided medical opinions stating that the Claimant would be unable to vacate her home unassisted in the event of an emergency and that she requires physical assistance with transfers at times. Based on information provided during the hearing, the Claimant is awarded one (1) additional deficit for one-person assistance with transferring and one (1) additional deficit for inability to vacate in the event of an emergency.

6) Aged/Disabled Home and Community-Based Services Manual Section 501(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 501.3.1.1 (D-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 501.3.2 (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. The Claimant was awarded four (4) deficits on her June 2008 Aged/Disabled Waiver Program medical reevaluation.
- 2) As a result of information provided during the hearing, two (2) additional deficits are awarded to the Claimant in the areas of one-person assistance with transferring and inability to vacate the building in the event of an emergency. This brings the Claimant's total number of deficits to six (6).
- 3) The required 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 terminate the Claimant's benefits under the Aged/Disabled, Title XIX (HCB) Waiver Program. The additional deficits awarded by the Hearing Officer should be considered when determining the Claimant's Level of Care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of January, 2009.

**Pamela L. Hinzman
State Hearing Officer**