



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

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

November 11, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 10, 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 do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** 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
All Care Home & Community Service

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

-----,

Claimant,

v.

Action Number: 09-BOR-1850

**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 November 11, 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 November 10, 2009 on a timely appeal filed August 8, 2009 and received by the Hearing Officer on September 28, 2009.

It should be noted that the Claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

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

-----, RN/Case Manager, All Care Home & Community Service

Kay Ikerd, RN, Bureau of Senior Services

Teresa McCallister, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

It should be noted that all parties participated telephonically.

IV. QUESTION TO BE DECIDED:

The question 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 Sections 501.3, 501.3.1, 501.3.1.1, 501.3.2 and 501.3.2.1

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 July 21, 2009
- D-3 Notice of Potential Denial dated August 11, 2009
- D-4 Letter from Dr. [REDACTED] dated August 21, 2009
- D-5 Denial notice dated August 28, 2009

Claimant's Exhibits:

- C-1 Correspondence from Dr. [REDACTED] dated August 1, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Home and Community-Based Waiver Program and underwent an annual medical evaluation 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 July 21, 2009 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits three (3) qualifying deficits in the areas of physical assistance with bathing, dressing and grooming.

- 3) The Claimant was sent a Notice of Potential Denial on August 11, 2009 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. Additional documentation was received from Dr. [REDACTED] (D-4), however, it failed to alter the Claimant's medical ineligibility for the program.
- 4) The Claimant was sent a final denial notice on August 28, 2009 (D-5).
- 5) The Claimant and her witness contended that additional deficits should be awarded in the following areas:

Inability to vacate in the event of an emergency- The Claimant's Nurse/Case Manager testified that she does not believe the Claimant, who has Chronic Obstructive Pulmonary Disease, could vacate her residence in the event of an emergency because she could not retrieve her oxygen and exit. The Case Manager believes that the Claimant overstates her abilities at times.

The WVMi Nurse testified that – on the date of the assessment - the Claimant insisted she would be able to exit her residence unassisted in the event of an emergency, but may need someone to direct her and ensure that she takes an oxygen tank. The WVMi Nurse indicated that she questions whether the Claimant would be able to vacate unassisted, but had rated the Claimant as needing supervision based on the Claimant's statement on the assessment date.

Based on information provided during the hearing, one (1) additional deficit is awarded for inability to vacate in the event of an emergency. Based on the Claimant's poor respiratory capacity, it is reasonable to believe that she would require assistance to exit her residence, particularly in the event of a fire.

Inability to administer medication- The Nurse/Case Manager testified that the Claimant's neighbor sorts her pills and the Claimant requires reminders to take them.

The WVMi Nurse indicated that the Claimant must be unable to place the pills in her mouth in order to receive a deficit for medication administration.

The Claimant was assessed on the PAS as requiring prompting/supervision with medication administration and this assessment is accurate based on testimony presented during the hearing. Therefore, no additional deficit can be awarded in this area of functionality.

One-person physical assistance with walking- The RN/Case Manager testified that the Claimant cannot ambulate for long distances unassisted.

The WVMi Nurse stated that the Claimant was able to walk 25 feet to her bathroom on the date of the assessment with a slow, steady gait and small stride. The Claimant reportedly held onto doorways and furniture at times. The nurse noted that the Claimant had shortness of breath, and reported back and leg pain. The Claimant has a power wheelchair in her living room and reported that she could independently maneuver the chair. She was assessed as requiring a supervised/assistive device to ambulate.

As the Claimant was able to ambulate by holding onto doorways/furniture on the date of the assessment – and also has a power wheelchair in her home which she can operate independently – the PAS rating of supervised/assistive device is correct and no deficit can be awarded in this area.

The Claimant and her RN/Case Manager also addressed the Claimant's chronic back pain and numerous recent hospitalizations.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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 three (3) deficits on her July 2009 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, one (1) additional deficit is awarded to the Claimant in the area of inability to vacate in the event of an emergency.
- 3) The addition of one (1) deficit brings the Claimant's total number of deficits to four (4). Therefore, the required deficits have not 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 **uphold** the Agency's proposal to terminate the Claimant's benefits under the 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 11th Day of November, 2009.

**Pamela L. Hinzman
State Hearing Officer**