



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 29, 2009

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 23, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Medicaid 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]

The information submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

_____,

Claimant,

v.

Action Number: 08-BOR-2381

**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 29, 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 December 23, 2008 on a timely appeal filed November 3, 2008.

It should be noted that benefits and services have continued pending a hearing decision.

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:

_____, Homemaker
Kay Ikerd, RN, BoSS (Participated telephonically)
Debra LeMasters, RN, WVMI (Participated telephonically)

Presiding at the hearing was Thomas E. Arnett, 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 or not the Agency was correct in its proposal to terminate the Claimant's benefits and services through the Medicaid Aged & Disabled, Home and Community-Based (HCB), Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual, Chapter 500, Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed on 10/1/08
- D-3 Notice of Potential Denial dated 10/6/08
- D-4 Notice of Termination/Denial dated 10/28/08
- D-5 Medical Necessity Evaluation Request dated 9/4/08

Claimant's Exhibits:

- C-1 Supporting medical documentation - [REDACTED] County Health Department Home Health Care Services Intake/Telephone Referral dated 10/16/08; Home Health Certification and Plan of Care (10/21/08 – 12/19/08); Discharge Report from [REDACTED] Hospitals dated October 15 & 16, 2008; Progress Note from [REDACTED] M.D. dated 12/4/08; and Addendum dated 12/10/08 from [REDACTED] M.D.
- C-2 Medical documentation of Esophagram performed on 1/18/08.

VII. FINDINGS OF FACT:

- 1) On October 1, 2008, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program (See Exhibit D-2, Pre-Admission Screening (PAS) completed on 10/1/08).

- 2) On or about October 6, 2008, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 501.3.2.

Based on your PAS you have deficiencies in only 2 areas – Vacate a Building [in the even of an emergency] and Grooming.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks. It should be noted that no additional information was received within the noted time requirement.

- 3) The Claimant was subsequently notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated October 28, 2008 (Exhibit D-4). This notice states, in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 2 areas – Vacate a Building [in the event of an emergency] and Grooming.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates two (2) deficits but indicated the medical assessment completed in October 2008 fails to identify five (5) functional deficits necessary to establish medical eligibility for participation in the ADW Program.
- 5) The Claimant contends that he remains medically eligible to participate in the ADW Program as he is also demonstrating a functional deficit in Walking, Eating, Bathing and Dressing. The Claimant further purported that his condition has deteriorated since suffering a stroke on October 14, 2008 (See Exhibit C-1).

- 6) The Claimant was assessed at a level 1 (Self/Prompting) in the area of eating by the WVMi RN (Exhibit D-2, section 26.a.). Page 8 of 10 (Exhibit D-2) includes assessment notes made by the WVMi RN, which state – “Per those present he can feed himself and cut up his own food. HM [Homemaker] denied he required assist with cutting up food and client denied he required food be cut up for him. No grasp impairment noted.”

The Claimant testified that he could not cut his food at the time of the assessment due to carpal tunnel problems in his left hand and that the use of his left hand has deteriorated since having a stroke. The Claimant’s homemaker purported that she had to cut his food at the time of the assessment.

The Medical Necessity Evaluation Request (Exhibit D-5) fails to note a diagnosis of carpal tunnel or an impaired grasp. While the Claimant’s grasp may have deteriorated since having a stroke on October 14, 2008, I find the testimony presented at the hearing by the Claimant and his homemaker incredible. The documentation on the PAS assessment clearly demonstrates that the Claimant’s ability to cut his food was fully explored by the evaluating nurse and properly assessed at a level 1. **The Claimant was not demonstrating a functional deficit in eating at the time of the assessment.**

- 7) The Claimant testified at the hearing that his homemaker washes his back and that he feels more comfortable with her there in case he has a seizure. The Claimant’s homemaker stated – “I have been present, not every day, but most generally, I am present.” When asked if she assists the Claimant with bathing, she replied - “I help him wash a little bit, but you know, not everywhere.” When asked specifically what she does to assist the Claimant, she stated that she washes his back.

Exhibit D-2, page 8 of 10, indicates the Claimant reported using a grab bar for support to transfer in and out of the shower/tub and that he does not use a shower chair. The Claimant reported that he washes himself and showers in the evenings when the homemaker is not in the home.

The homemaker provides formal support (D-1, page 1 of 10) four days per week, 9AM to 2PM. If the Claimant bathes in the evening/night, it is reasonable to conclude that the homemaker would not be available to assist the Claimant. Moreover, when questioned specifically about the assistance provided in bathing, the Claimant’s response was unconvincing. **Based on the evidence, I find the assessment by the WVMi RN accurate – the Claimant does not qualify for a deficit in bathing.**

- 8) The Claimant was fully dressed on the day of the assessment (pull over t-shirt, jeans, socks and shoes) and reported that he dresses himself daily. The homemaker reported that he is always dressed when she arrives and noted he had changed his clothes – “not wearing same clothes as when she was there the day before.” The WVMi RN further documented that the Claimant demonstrated range of motion movements necessary for putting on a shirt, pants, socks and shoes.

The Claimant and his homemaker reported difficulty with buttons, pulling his shirt down once it is over his head, and pulling his pants up once they are started. This testimony, however, is inconsistent with the information reported on the day of the assessment and the Claimant's demonstrated physical abilities. **The Claimant was correctly assessed at a level 1 (prompting/supervision) and does not qualify for a deficit in dressing.**

- 9) The Claimant testified that he wobbles when he walks because he has two artificial knees. He purported that he is afraid he might blackout or go into a seizure and he has a portable oxygen bottle when out of the home. The Claimant's homemaker reported that she must sometimes assist him with his oxygen bottle and that she walks beside him for safety reasons.

Documentation found in Exhibit D-2, page 9 of 10, states – "Stated has cane that he stated uses out of home only. Ambulated across living room at visit and ambulated independently, no loss of balance was noted. HM [Homemaker] denied he used assistive device for ambulation in the home that he is able to ambulate independently in the home." Testimony received at the hearing further indicates that the Claimant has a long hose for his oxygen machine and does not ambulate with an oxygen bottle in his home. It should also be noted that the Claimant ambulated into the hearing room with the assistance of a cane (no physical assistance required). **While it is clear that the Claimant has difficulty with ambulation, the Claimant ambulates without physical assistance, and therefore, does not qualify for a deficit in the functional area of walking.**

- 10) The last page of Exhibit C-1 includes medical documentation by [REDACTED] M.D., dated 12/10/2008. In this documented entitled Addendum, Dr. [REDACTED] states the following:

It appears that criteria to qualify patient under the home- & community-based Aged/disabled Waiver Program are fairly specific. I have reviewed the fax sent to [REDACTED] MSW, from Public Partnerships in [REDACTED] WV. We are directed by the fax cover sheet to review the document relating to the criteria used apparently to gauge pt's qualifications for this program. I have done so and must agree w/ the documentation as listed in those particular items, based on my current knowledge of the patient's case.

- 11) 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.

- 12) 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.

13) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 Medical Criteria: 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:
 - (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 states that an individual must demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded two (2) deficits on a PAS completed by WVMi on October 1, 2008 – Vacating and Grooming.

- 3) The evidence submitted at the hearing fails to identify any additional functional deficits and the Claimant's physician agreed with the findings as indicated in Exhibit C-1, 12/10/08 Addendum.
- 4) Whereas the Claimant demonstrates two (2) program qualifying deficits, continued medical eligibility for participation in the Aged/Disabled Waiver Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's benefits and services through the Medicaid Aged/Disabled, Title XIX (HCB), Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of January, 2009.

**Thomas E. Arnett
State Hearing Officer**