



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 8, 2009

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 7, 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 continue to 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
CWVAS

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

_____,

Claimant,

v.

Action Number: 08-BOR-2271

**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 8, 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 7, 2009 on a timely appeal filed September 29, 2008 and received by the Hearing Officer on November 3, 2008. The hearing was originally scheduled for December 2, 2008, but was rescheduled at the request of the Department.

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
_____, Case Manager, Central West Virginia Aging Services
_____, Homemaker RN, Central West Virginia Aging Services
Kay Ikerd, RN, Bureau of Senior Services (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 Sections 501, 501.3.1.1 and 501.3.2

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 August 5, 2008
- D-3 Notice of Potential Denial dated August 25, 2008
- D-4 Denial notice dated September 15, 2008

Claimant's Exhibits:

- C-1 Letter to West Virginia Medical Institute from _____ dated August 27, 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) West Virginia Medical Institute (WVMI) Nurse Barbara Plum completed a Pre-Admission Screening (PAS) medical assessment on August 5, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified three (3) qualifying deficits for the Claimant in the areas of physical assistance with

- 3) The Claimant was sent a Notice of Potential Denial on August 25, 2008 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. Additional information was submitted (C-1) and the Claimant was awarded one additional deficit for one-person assistance with walking, bringing the Claimant's total deficits to four (4).
- 4) The Claimant was sent a final denial notice on September 15, 2008 (D-4).
- 5) During the hearing, the Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Physical assistance with grooming- The Central West Virginia Aging Services Homemaker RN contended that the Claimant, who is a diabetic, should be awarded a deficit for physical assistance with grooming since a podiatrist cuts her toenails. The Homemaker RN maintained that if the Claimant did not see a podiatrist, a family member or friend would have to cut her toenails due to her chronic back pain and limited movement in one of her fingers.

The Bureau of Senior Services (BoSS) Nurse testified that the cutting of toenails is considered a "skilled need" since the Claimant is a diabetic, therefore, no deficit was awarded.

Based on information presented during the hearing, one (1) additional deficit is awarded for physical assistance with grooming. While the Claimant's toenails are trimmed by a podiatrist due to her diabetes, it is reasonable to believe that she would be physically unable to cut the nails herself under any circumstances. Therefore, the Claimant requires physical assistance with grooming.

Physical assistance with bathing- The Homemaker RN and Case Manager testified that the Claimant is unable to get out of bed on some days and requires physical assistance with bathing at times. The Case Manager testified that she visits the Claimant's home frequently and the Claimant often does not feel well. The Claimant also has difficulty lifting her arm.

The BoSS Nurse testified that PAS comments indicate the Claimant reported needing no physical assistance with bathing during the assessment. The Claimant had reported requiring assistance with bathing in the month prior to the PAS because she had fallen at a cemetery.

The Claimant's daughter, who was present during the assessment, testified that she did not contradict her mother during the hearing because she did not realize the importance of providing accurate information. She stated that her mother often uses humor to cope with her pain and wants to feel independent.

Based on the Claimant's diagnoses of chronic back pain and osteoporosis, it is reasonable to believe that she requires assistance with bathing at times. Therefore, one (1) additional deficit is awarded for physical assistance with bathing.

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 August 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 physical assistance with grooming and bathing, bringing the Claimant's total 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 deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The additional deficits awarded by the Hearing Officer must 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 8th Day of January, 2009.

**Pamela L. Hinzman
State Hearing Officer**