



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

April 23, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 22, 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
CCIL

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

-----,

Claimant,

v.

Action Number: 09-BOR-743

**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 April 23, 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 by telephone on April 22, 2009 on a timely appeal filed February 6, 2009.

It should be noted that benefits have been 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:

-----, Claimant

-----, RN, West Virginia Choice

██████████ Case Manager, Coordinating Council for Independent Living

-----, Homemaker, West Virginia Choice

Kay Ikerd, RN, Bureau of Senior Services

-----, 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.

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 January 13, 2009

D-3 Notice of Potential Denial dated January 20, 2009

D-4 Denial notice dated February 5, 2009

D-5 Letter from -----, RN/Case Manager, Coordinating Council for Independent Living, dated January 23, 2009

D-6 Undated letter from Dr. -----

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent a 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 January 13, 2009 (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 January 20, 2009 (D-3) and was advised that she had two weeks to submit additional medical information for consideration.

Additional documentation was submitted from ----, RN and Case Manager for Coordinating Council for Independent Living (D-5), however the information failed to change the PAS findings.

- 4) The Claimant was sent a final denial notice on February 5, 2009 (D-4).
- 5) During the hearing, the Claimant and her witnesses contended that additional deficits should be awarded in the following areas:

One-person physical assistance with transferring and walking- The West Virginia Choice Nurse testified that the Claimant – who has been diagnosed with peripheral neuropathy and lumbar degenerative disc disease with lower extremity radiculopathy - has continuous back, leg and knee pain and requires physical assistance with transferring and ambulation on some days. The nurse reported that the Claimant has chronic numbness in her lower extremities due to diabetes. This information was also contained in the additional documentation provided to WVMi in January 2009 by ---- (D-5). The Claimant testified that the need was present at the time of the PAS, however, the frequency of assistance has increased.

The WVMi Nurse testified that the Claimant denied the need for assistance with transfers and ambulation at the time of the PAS, and was able to transfer and walk holding onto furniture for support on that date. She was rated as requiring supervision/assistive device in transferring and ambulation, which does not constitute a deficit for the Aged/Disabled Waiver Program. PAS notes indicate that the Claimant and her spouse were the only individuals present with the nurse during the assessment.

The West Virginia Choice Nurse pointed out that PAS comments indicate the Claimant had reported the need for assistance with transfers during bathing. The WVMi Nurse responded that transferring into a bathtub is considered part of the bathing process and the Claimant was awarded a deficit 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 January 2009 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 physical assistance with transferring and walking. Based on the Claimant's medical conditions, it is reasonable to believe that she requires

- 3) The addition of two (2) deficits brings the Claimant's total number of deficits to six (6).
- 4) 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 23rd Day of April, 2009.

**Pamela L. Hinzman
State Hearing Officer**