



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

May 12, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 6, 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
COWAS

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

-----,

Claimant,

v.

Action Number: 09-BOR-749

**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 May 12, 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 May 6, 2009 on a timely appeal filed January 14, 2009 and received by the Hearing Officer on February 26, 2009.

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 wife

-----, RN, Central West Virginia Aging Services

██████████ Case Manager, Central West Virginia Aging Services

Telephonic participants:

Kay Ikerd, RN, Bureau of Senior Services

Debra Lemasters, 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 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 December 17, 2008

D-3 Notice of Potential Denial dated December 22, 2008

D-4 Denial notice dated January 12, 2009

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 he 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 December 17, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified two (2) qualifying deficits for the Claimant in the areas of physical assistance with bathing and grooming. It should be noted that only the Claimant and his wife were present with the WVMI Nurse in the home during the assessment.

- 3) The Claimant was sent a Notice of Potential Denial on December 22, 2008 (D-3) and was advised that he had two weeks to submit additional medical information for consideration.
- 4) The Claimant was sent a final denial notice on January 12, 2009 (D-4).
- 5) The Claimant's witnesses contended that additional deficits should be awarded in the following areas:

One-person physical assistance with walking and transferring, and physical inability to vacate- The Claimant and his witnesses testified that the Claimant requires one-person assistance with ambulation and transfers on certain days as he receives kidney dialysis three times per week and experiences weakness following the treatments. The Claimant's Case Manager testified that the Claimant would need physical support to vacate the building in the event of an emergency when he is in a weakened state. She testified that the Claimant has fallen due to leg weakness.

The WVM Nurse testified that the Claimant was rated as needing supervision to vacate and as requiring supervision/assistive devices to walk and transfer. She testified that the Claimant transferred using furniture and ambulated independently on the date of the assessment. The Claimant reported that he was having a "good day" on the date of the PAS and indicated that his legs are weak on "bad days" and he uses walls and furniture for support. He had reported that his legs have given out, causing him to fall. The PAS states, "Ambulated independently and without difficulty at visit. He stated on bad days he does use furniture and walls for support in the home. He stated on bad days he does require physical support outside to walk to the car. He stated he takes his cane and puts his arm around his daughters [*sic*] shoulders for support. Client would require supervision for vacating in event of a bad day and having 'leg weakness' and he may require support on bad day, on good days is able to vacate independently. He stated bad days occur weekly and usely [*sic*] after dialysis treatment."

Based on information provided during the hearing, one (1) deficit is awarded for one-person assistance with walking, one (1) deficit is awarded for one-person assistance with transferring, and one (1) deficit is awarded for physical assistance with vacating. The Claimant undergoes kidney dialysis three (3) days per week, therefore it is reasonable to believe that he experiences weakness following the treatments on a regular basis. While the Claimant was able to transfer and ambulate without physical assistance on the date of the assessment, he was reportedly having a "good day" and his physical capabilities on a "bad day" were not observed by the assessing nurse.

Orientation- The Claimant's witnesses testified that he experiences confusion following dialysis treatments.

The WVM Nurse testified that the Claimant was alert and oriented during the assessment, and an individual must be either totally disoriented or comatose to receive a deficit in this area. A deficit cannot be awarded for intermittent disorientation.

As the Claimant reportedly experiences intermittent periods of disorientation, no deficit can be awarded in this area.

Medication administration- The Claimant's wife testified that she draws the Claimant's insulin because of his poor vision. The Claimant is able to give himself insulin injections and take pills that are set before him. PAS notes indicate that this information was provided to the WVMI Nurse during the assessment, however the nurse testified that insulin administration is considered a technical/professional care need. Therefore, she could award no deficit.

Based on information provided during the hearing, one (1) deficit is awarded to the Claimant for inability to administer medication. While the Claimant is capable of taking pills and giving himself insulin injections, he is incapable of filling syringes due to his poor eyesight. The drawing of insulin is clearly vital to the medication administration process and the Department provided no policy to verify that insulin administration must only be considered as a professional/technical care need.

Physical assistance with bathing- The Claimant reported that his wife assists him with drying off after bathing at times. He stated that he is capable of bathing and drying off when he is having a "good day."

The WVMI Nurse testified that the Claimant's daughter is his homemaker and he had indicated he will not allow his daughter to assist with washing or permit her to see him undressed. His wife had indicated that "on 'rare occasion' she washes his back, but that he does not want her to assist him with bathing either. The Claimant had reported that he showers daily, even on bad days.

Since the frequency of bathing assistance is unclear – and based on the Claimant's reluctance to receive assistance with bathing - no deficit can be awarded in this area.

7) 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.

8) 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.

- 9) 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 two (2) deficits on his December 2008 Aged/Disabled Waiver Program medical reevaluation.
- 2) As a result of information provided during the hearing, four (4) additional deficits are awarded by the Hearing Officer in the areas of one-person physical assistance with walking and transferring, inability to vacate the building in the event of an emergency, and medication administration. This brings 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 12th Day of May, 2009.

**Pamela L. Hinzman
State Hearing Officer**