



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

June 2, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 27, 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
[REDACTED] Committee on Aging

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

-----,

Claimant,

v.

Action Number: 09-BOR-929

**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 June 2, 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 27, 2009 on a timely appeal filed March 11, 2009 and received by the Hearing Officer on April 16, 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.

The ADW Program is defined as a long-term care alternative that provides services to enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

III. PARTICIPANTS:

-----, Claimant
-----, Claimant's girlfriend/care provider for Select In-Home Services
-----, Case Manager, [REDACTED] Committee on Aging
-----, RN, Select In-Home Services

Telephonic participants:

Brian Holstine, Licensed Social Worker, Bureau of Senior Services
Barbara Plum, 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 February 9, 2009
D-3 Notice of Potential Denial dated February 17, 2009
D-4 Denial notice dated March 5, 2009

Claimant's Exhibits:

C-1 Letter from ----- dated May 14, 2009
C-2 Denial notice dated March 5, 2009
C-3 Request for Hearing and hearing appointment letter
C-4 Letter from Dr. ----- dated January 12, 2007
C-5 Statement from ----- Medical Practices dated February 23, 2009
C-6 Letter from Dr. ----- dated May 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. It should be noted that the Claimant is 46 years old and

suffers from Huntington's Disease, a neurodegenerative disorder which impairs bodily movements and cognition and produces psychiatric symptoms.

- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on February 9, 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 eating, bathing and dressing, and inability to vacate the building in the event of an emergency.
- 3) The Claimant was sent a Notice of Potential Denial on February 17, 2009 (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 March 5, 2009 (D-4).
- 5) The Claimant's witnesses contended that additional deficits should be awarded in the following areas of functionality:

Physical assistance with grooming- The Claimant's Case Manager testified that the Claimant is unable to wash his hair on certain days and requires assistance to touch up shaved areas. A February 23, 2009 statement from ----- Medical Practices (C-5) states that the Claimant requires physical assistance with grooming. Letters from Dr. ----- (C-4 and C-6) indicate that the Claimant's fine and gross motor skills are impaired, and that his medical condition causes uncontrollable body movements.

The WVMI Nurse testified that the Claimant reported he could wash and rinse his hair unassisted on the date of the assessment. He had reported that he shaves unassisted with an electric razor.

Based on information provided during the hearing, it is reasonable to believe that the Claimant requires physical assistance with grooming on some days due to the nature of his illness. Therefore, one (1) additional deficit is awarded for physical assistance with grooming.

Inability to administer medication- Witnesses for the Claimant testified that he cannot administer medication, however their testimony concerned supervision/preparation of medication. No testimony was offered to indicate that the Claimant cannot take medication once it has been set out for him. PAS notes indicate that the Claimant was not taking prescription medication at the time of the assessment.

Because the Claimant is able to take medication once it is prepared for him, no deficit can be awarded for medication administration.

Orientation- Witnesses for the Claimant testified that there are times when the Claimant is neither alert nor oriented.

The Claimant was rated as having intermittent disorientation on the PAS, which is a correct assessment based on information provided during the hearing. Therefore, no additional deficit can be awarded for orientation.

One-person physical assistance with walking- The Select In-Home Services Nurse testified that the Claimant is very unsteady when ambulating and requires physical assistance. The statement from ----- Medical Practices (C-5) indicates that the Claimant requires one-person physical assistance with walking. The Claimant's girlfriend/care provider testified that the Claimant cannot look down when he walks, while letters from Dr. ----- (C-4 and C-6) address the Claimant's inability to control his bodily movements.

PAS notes state that the Claimant ambulated without difficulty on the date of the assessment, but he had indicated he uses walls or furniture to balance himself if he becomes wobbly.

In light of the Claimant's medical condition, it is reasonable to believe that the Claimant requires physical assistance with ambulation at times. Therefore, one (1) additional deficit is awarded for one-person assistance with walking.

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 his February 2009 Aged/Disabled Waiver Program medical reevaluation.
- 2) As a result of information provided during the hearing, two (2) additional deficits are awarded by the Hearing Officer in the areas of physical assistance with grooming and one-person physical assistance with walking. This brings the Claimant's total number of 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 terminate the Claimant's benefits and services 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 2nd Day of June, 2009.

**Pamela L. Hinzman
State Hearing Officer**