



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

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

July 16, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 14, 2010. 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 do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** 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
[REDACTED]
BoSS
WVMI

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

-----,

Claimant,

v.

Action Number: 10-BOR-1314

**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 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 July 14, 2010 on an appeal filed May 12, 2010.

II. PROGRAM PURPOSE:

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

-----, Claimant's daughter

-----, Case Manager, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)

Barbara Plum, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question 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 501.3, 501.3.1, 501.3.1.1, 501.3.2 and 501.3.2.1

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 April 15, 2010

D-3 Notice of Potential Denial dated April 22, 2010

D-4 Information from [REDACTED] M.D., dated May 6, 2010 (received by Department on July 13, 2010)

D-5 Denial Notice dated May 7, 2010

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent a medical evaluation 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 April 15, 2010 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits three (3) qualifying deficits in the areas of *inability to vacate the building in the event of an emergency, and physical assistance with bathing and grooming.*

- 3) The Claimant was sent a Notice of Potential Denial on April 22, 2010 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. No additional documentation was received by the Department.
- 4) The Claimant was sent a final Denial Notice on May 7, 2010 (D-5).
- 5) The Claimant's representatives contended that she exhibits two (2) additional deficits in the areas of *physical assistance with eating and dressing*. [REDACTED] Case Manager ----- testified that the Claimant has been diagnosed with Alzheimer's disease and her condition changes on a daily basis. The Case Manager indicated that she was not present during the PAS assessment, however the Claimant's daughter, -----, was present and may not have fully understood some questions. The Case Manager stated that documentation from [REDACTED] M.D., (D-4) indicates that the Claimant (per her daughters) is unable to feed herself without assistance and requires assistance with dressing.

-----testified that her mother has required more assistance since the date of the PAS. She indicated that she cooks her mother's food and puts it on a plate, but the Claimant is able to feed herself. -----also testified that she lays out her mother's clothes, hems the clothing, and assists her mother with putting on socks.

The WVM Nurse testified that the Claimant's daughter reported that the Claimant could feed herself and cut up her own foods on the date of the assessment. In addition, the Claimant's daughter reported that the Claimant was able to fully dress herself at that time. This information is documented on Page 6 of 7 of Exhibit D-2. Bureau of Senior Services (BoSS) Registered Nurse Kay Ikerd testified that the statement from Dr. [REDACTED] is general and does not contain specific information about the Claimant's needs in the areas of eating and dressing. Ms. Ikerd testified that the information is dated May 6, 2010, but was not received by the Department until July 13, 2010, therefore, the documentation was not submitted for consideration in a timely manner.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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 three (3) deficits on her April 2010 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, no additional deficits are awarded to the Claimant in the areas of physical assistance with eating and dressing. According to testimony and documentation, the Claimant's daughter indicated that the Claimant was able to dress and feed herself independently at the time of the PAS. In addition, the physician's statement provides no specific information concerning the Claimant's needs in the areas of eating and dressing, and the Claimant's daughter indicated that her mother is requiring more help since the time of the PAS.
- 3) As no additional deficits can be identified based on information presented during the hearing, the required deficits have not 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 **uphold** the Agency's proposal to terminate the Claimant's benefits under the Aged/Disabled, Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th Day of July, 2010.

**Pamela L. Hinzman
State Hearing Officer**