



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

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

December 9, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 1, 2010. Your hearing request was based on the Department of Health and Human Resources' action to deny 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 meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in denying 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

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

-----,

Claimant,

v.

Action Number: 10-BOR-2107

**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 telephonically on December 1, 2010 on an appeal filed September 24, 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

-----, RN, [REDACTED]

-----, Homemaker, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services

Kim Sang, 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. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its action to deny 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 September 13, 2010
- D-3 Notice of Potential Denial dated September 14, 2010
- D-4 Denial Notice dated October 4, 2010
- D-5 Letter from [REDACTED] M.D., dated August 4, 2010

Claimant's Exhibits:

- C-1 Letter from [REDACTED] M.D., dated December 6, 2010

VII. FINDINGS OF FACT:

- 1) The Claimant applied for benefits under the Aged/Disabled Waiver Program and underwent a medical evaluation to determine if she meets medical eligibility criteria for the program.
- 2) West Virginia Medical Institute (WVMI) Nurse Kim Sang completed a Pre-Admission Screening (PAS) medical assessment on September 13, 2010 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits four (4) qualifying deficits in the areas of *inability to vacate the building in the event of an emergency, and physical assistance with bathing, dressing and grooming.*
- 3) The Claimant was sent a Notice of Potential Denial on September 14, 2010 (D-3) and was advised that she had two weeks to submit additional medical information for consideration.
- 4) The Claimant was sent a final Denial Notice on October 4, 2010 (D-4).

- 5) The Claimant's representatives contended that she should receive an additional deficit for incontinence of bladder. It should be noted that the Claimant was rated as being occasionally incontinent (less than three times per week) on the PAS and the following information was recorded on the PAS regarding bladder/bowel incontinence: "She has incontinence of her bladder- states it has had [sic] happened one time in last week/denies any incontinence of her bowels."

The Claimant testified that she believes there was a misunderstanding between herself and the WVMi Nurse in regard to bladder incontinence. She indicated that is incontinent several times per week and is seeing a urologist in regard to urine leakage. She stated that she has mobility issues and is confined to her room. The Claimant's [REDACTED] Homemaker, ----, testified that she has been working with the Claimant for eight months. She stated that she does the Claimant's laundry and the Claimant wets herself every night. According to PAS documentation, the Claimant has been prescribed Toviaz for "frequency."

The WVMi Nurse testified that she can only document what she is told during the PAS assessment, and that the PAS was reviewed with the Claimant and her daughter for accuracy.

Based on conflicting information presented during the hearing, the hearing record remained open until December 8, 2010 so that the Claimant could obtain a physician's statement in regard to her urinary incontinence issues.

On December 6, 2010, the Hearing Officer received the following information from [REDACTED] M.D. (C-1):

This letter is to confirm that I am ----'s physician and see her regularly. She started experiencing urinary incontinence in approximately January of 2010. She is now experiencing urinary incontinence on a frequent basis daily.

- 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 four (4) deficits on her September 2010 Aged/Disabled Waiver Program medical evaluation.

- 2) Based on information provided during the hearing, one (1) additional deficit is awarded to the Claimant in the area of urinary incontinence. The Claimant testified that she is incontinent several times per week and her homemaker confirmed that she must launder the Claimant's soiled clothing on a daily basis. In addition, the Claimant's physician confirmed that the Claimant has experienced urinary incontinence since January 2010.
- 3) The addition of one (1) deficit brings the Claimant's total number of deficits to five (5), rendering her medically eligible for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's action to deny 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 9th Day of December, 2010.

**Pamela L. Hinzman
State Hearing Officer**