



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

February 11, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 4, 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 do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny 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
[REDACTED]
WVMI

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

-----,

Claimant,

v.

Action Number: 09-BOR-2228

**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 February 11, 2010 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 February 4, 2010 on an appeal filed November 16, 2009 and received by the Hearing Officer on December 27, 2009.

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/witness

-----, RN, [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. QUESTIONS TO BE DECIDED:

The question(s) 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 October 6, 2009
- D-3 Notice of Potential Denial dated October 19, 2009
- D-4 Information from Dr. [REDACTED] dated October 27, 2009
- D-5 Denial notice dated November 6, 2009
- D-6 Hearing Request received November 16, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant is an applicant of benefits under the Aged/Disabled Waiver Program and underwent a medical evaluation to determine if she meets medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on October 6, 2009 (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 a 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 October 19, 2009 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. Additional information from Dr. [REDACTED] (D-4) was submitted, however, the documentation failed to alter the PAS findings.
- 4) The Claimant was sent a final denial notice on November 6, 2009 (D-5).
- 5) The Claimant's daughter testified that her mother experiences shortness of breath and requires assistance with ambulation and transfers. She indicated that the Claimant tries to be independent, but needs assistance getting out of bed at times. The information provided by Dr. [REDACTED] (D-4) states that the Claimant requires one-person assistance with transferring and walking due to respiratory issues. The Claimant's daughter indicated that the Claimant's need for assistance has increased since the assessment.

The WVMI Nurse testified that she considered Dr. [REDACTED] information, however, no additional deficits were awarded to the Claimant because the Claimant had no difficulty ambulating and transferring on the date of the assessment and denied needing assistance in these areas. She was able to transfer several times without difficulty from a kitchen chair and walked throughout the home with no cane or walker. The WVMI Nurse indicated that the Claimant's daughter and the [REDACTED] Nurse were present on the date of the PAS and the findings were reviewed following the assessment. There is no indication that transferring and walking were addressed as areas of concern on that date.

- 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 October 2009 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, no additional deficits are awarded to the Claimant. While the Claimant's physician provided a statement indicating that the Claimant requires one-person assistance with transferring and walking, the WVMI Nurse testified that the Claimant transferred and ambulated throughout her home independently on the date of the assessment, and denied needing assistance. The Claimant's daughter and the [REDACTED] Nurse were also present during the assessment, but did not indicate that the Claimant required assistance with transfers and ambulation. Testimony indicates that the Claimant's needs in these functional areas have increased since the PAS was completed.
- 3) 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 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 11th Day of February 2010.

**Pamela L. Hinzman
State Hearing Officer**