



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

April 28, 2010

c/o -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 22, 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
BoSS
WVMI
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 10-BOR-820

**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 April 22, 2010 on an appeal filed February 11, 2010 and received by the Hearing Officer on March 9, 2010.

It should be noted that benefits have continued pending a hearing decision.

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's daughter
-----, Case Manager, [REDACTED]
Kay Ikerd, RN, Bureau of Senior Services
Melissa Bell, 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 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 January 4, 2010
- D-3 Notice of Potential Denial dated January 6, 2010 and letters from [REDACTED] M.D., and [REDACTED] M.D.
- D-4 Denial Notice dated March 3, 2010

Claimant's Exhibits:

- C-1 Homemaker Worksheets

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 Melissa Bell completed a Pre-Admission Screening (PAS) medical assessment on January 4, 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 physical assistance with bathing and grooming, and bowel incontinence.

- 3) The Claimant was sent a Notice of Potential Denial on January 6, 2010 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. Additional documentation was submitted from [REDACTED] M.D., and [REDACTED] M.D. (D-3). It should be noted that the WVMi Nurse awarded a deficit for inability to vacate the building in the event of an emergency following receipt of the additional information, bringing the Claimant's total number of deficits to four (4).
- 4) The Claimant was sent a final Denial Notice on March 3, 2010 (D-4).
- 5) The Claimant's representatives contended that she should receive an additional deficit for physical assistance with dressing. -----, daughter of the Claimant, testified that her mother's condition has declined. ----- and -----, Case Manager with the [REDACTED] questioned why the Claimant failed to receive a deficit for dressing in light of the additional documentation provided by her physicians. In his letter, Dr. [REDACTED] indicated that he believes the Claimant requires assistance with dressing her lower extremities at times due to Chronic Obstructive Pulmonary Disease, while Dr. [REDACTED] wrote that the Claimant needs assistance with almost all activities of daily living. In addition, the Case Manager provided Homemaker Worksheets (C-1) for December 2009 and January 2010 in which "assist" and "independently" are marked in regard to the level of assistance provided with dressing.

The WVMi Nurse testified that she reviewed the documentation, but did not award a deficit for dressing because both the Claimant and ----- indicated that the Claimant dresses independently. PAS comments, recorded by the nurse on the date of the assessment, state:

DRESSING: Member is dressed in pajama pants and top and socks. Member states HM will hunt clothes for her but has not had to help her get dressed so far. Member reports she is able to put on own socks and shoes. Daughter confirms.

The PAS also indicates that the Claimant was able to raise her hands above her head, touch her head, reach behind her back, touch her toes from a seated position, and cross her legs on the assessment date. It states that the Claimant demonstrated strong bilateral hand grips. The WVMi Nurse stated that she reviewed the assessment with those present and all were in agreement.

The Claimant's daughter testified that the Claimant was wearing pajamas on the date of the assessment. She indicated that the Claimant, who has a diagnosis of dementia, would wear the same clothing for days if left unattended.

- 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 January 2010 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, no additional deficits are awarded to the Claimant. On the date of the assessment, the Claimant reportedly stated – and her daughter confirmed – that she did not require assistance to dress. The Homemaker Worksheet is unclear in regard to the specific assistance provided to the Claimant and letters from the Claimant’s physicians are vague in regard to the frequency and/or level of assistance needed.
- 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 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 28th Day of April 2010.

**Pamela L. Hinzman
State Hearing Officer**