



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

May 7, 2010

c/o -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 5, 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
WVMI

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

-----,

Claimant,

v.

Action Number: 10-BOR-888

**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 May 5, 2010 on an appeal filed February 22, 2010 and received by the Hearing Officer on March 26, 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's daughter

-----, Claimant's private care provider

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

Melissa Bell, 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 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 December 28, 2009

D-3a Notice of Potential Denial dated January 6, 2010

D-3b Letter from ----- dated January 14, 2010

D-3c Letter from Dr. [REDACTED] dated January 13, 2010

D-4 Denial Notice dated February 18, 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 Melissa Bell completed a Pre-Admission Screening (PAS) medical assessment on December 28, 2009 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits one (1) qualifying deficit in the area of mental inability to vacate the building in the event of an emergency.
- 3) The Claimant was sent a Notice of Potential Denial on January 6, 2010 (D-3a) and was advised that she had two weeks to submit additional medical information for consideration. Additional documentation (D-3b) was submitted from the Claimant's daughter, -----, and Dr. [REDACTED] (D-3c), however the information failed to change the PAS findings.

- 4) The Claimant was sent a final Denial Notice on February 18, 2010 (D-4).
- 5) ----- testified that the Claimant, who has been diagnosed with dementia and Alzheimer's disease, should follow a diabetic diet, however, she does not eat properly. ----- stated that her mother forgets to do things and leaves foods, such as meat, unrefrigerated. The Claimant's care provider, -----, testified that the Claimant has bladder accidents and her clothing is often soiled with urine, although she could not specify a frequency. ----- indicated that it is difficult for her to determine the frequency of her mother's bladder accidents since she resides out of state. The Claimant's witnesses stated that the Claimant often requires reminders to bathe, and the care provider, who is with the Claimant for a limited number of hours each week, indicated that she fears the Claimant will develop infections. The witnesses testified that the Claimant is forgetful and at times does not know the season, when to take her medication, or when to turn on her oxygen tank. She can communicate freely, but repeats herself and makes up stories. The Claimant's daughter testified that her mother has fallen at her mailbox and off of her back porch. Dr. [REDACTED] documentation (D-3c) indicates that the Claimant would benefit from in-home services, and ----- stated that the assistance would allow her mother to remain in her home for a longer period of time.

The WVMI Nurse testified that the Claimant reported being able to physically feed and bathe herself on the date of the assessment. The Claimant and her daughter reported that the Claimant has bladder incontinence at times, but could provide the WVMI Nurse with no estimate of the weekly frequency of accidents. Therefore, the Claimant was rated as being occasionally incontinent of urine. The WVMI Nurse indicated that the Claimant was able to state her name, address, telephone number and Social Security number on the date of the assessment, but was confused about the month and day of week. Therefore, she was rated as being intermittently disoriented, which is not considered a functional deficit for the Aged/Disabled Waiver Program. The Claimant ambulated through the house on the PAS date by holding onto walls and furniture. The nurse indicated that the Claimant tripped over her oxygen and telephone cords during the assessment, but did not fall. She was rated as requiring supervision/assistive device to walk.

- 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 one (1) deficit on her December 2009 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, no additional deficits are awarded to the Claimant. While it is clear that the Claimant must be prompted to perform various tasks such as eating and bathing, the need for hands-on, physical assistance was not specified. The Claimant was assessed as requiring supervision/assistive device to walk and was rated as intermittently disoriented on the PAS. These areas were assessed properly according to the level of functionality observed by the WVMi Nurse on the date of the PAS. As the frequency of urinary incontinence could not be determined, the Claimant was rated accurately on the PAS as occasionally incontinent.
- 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 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 7th Day of May 2010.

**Pamela L. Hinzman
State Hearing Officer**