



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 29, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 28, 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 meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** 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-925

**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 April 29, 2010. 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 28, 2010 on an appeal filed March 2, 2010 and received by the Hearing Officer on March 26, 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
-----, daughter of Claimant
-----, daughter of Claimant
-----, Case Manager, [REDACTED]
-----, Homemaker, [REDACTED]
Cathie Zuspan, 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 12, 2010
- D-3 Notice of Potential Denial dated January 13, 2010
- D-4 Denial Notice dated February 8, 2010

Claimant's Exhibits:

- C-1 Letter from [REDACTED] M.D., dated January 18, 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 he 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 12, 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 physical assistance with bathing, dressing and grooming, and bladder incontinence.

- 3) The Claimant was sent a Notice of Potential Denial on January 13, 2010 (D-3) and was advised that he had two weeks to submit additional medical information for consideration. In response to the notice, the Claimant submitted a letter from [REDACTED] M.D., dated January 18, 2010 (C-1). The letter states:

----- (04/04/1932) is a patient of mine. Due to his unsteady gait resulting from a CVA and the fact that he takes Lorazepam at bedtime, I believe he would require assistance arousing and evacuating his home in an emergency.

As a result of the correspondence, the WVMI Nurse testified that she changed the PAS to indicate that the Claimant would require supervision to vacate in the event of an emergency. The Claimant was originally rated as being able to exit independently based on his statement during the assessment.

- 4) The Claimant was sent a final Denial Notice on February 8, 2010 (D-4).
- 5) -----, Case Manager with the [REDACTED] contended that Dr. [REDACTED] letter indicates the Claimant would require assistance – not supervision – to vacate in the event of an emergency as he suffered a stroke, has an unsteady gait and requires hands-on arousal from sleep due to the effect of his medication.

-----, daughter of the Claimant, testified that her father is shaky and confused when he is awakened and is unsteady on his feet. -----, daughter of the Claimant, testified that it is difficult to arouse her father from sleep and she does not believe he would be able to exit his home unassisted in the event of a fire. The Claimant's Homemaker, -----, addressed the Claimant's lack of balance and poor gait.

The WVMI Nurse testified that the Claimant believed he could vacate the home independently on the date the PAS was completed. PAS notes indicate that the Claimant's "gait is slow and shuffling but ambulated around home by using furniture only." The PAS also notes that the Claimant reported having poor balance since his stroke in 2008. During the hearing, the WVMI Nurse indicated that Lorazepam is used to treat anxiety and can cause drowsiness.

- 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 his January 2010 Aged/Disabled Waiver Program medical evaluation.
- 2) Based on information provided during the hearing, one (1) additional deficit is awarded to the Claimant for inability to vacate the building in the event of an emergency. Based on information from the Claimant's physician – as well as testimony offered during the hearing – it is reasonable to believe that the Claimant would require hands-on assistance to exit his residence during an emergency situation. Information provided during the hearing reveals that the Claimant takes medication that makes him drowsy and he is difficult to awaken. In addition, he has an unsteady, shuffling gait and could not likely exit quickly without assistance.
- 3) The addition of one (1) deficit brings the Claimant's total number of deficits to five (5). Therefore, the required deficits have 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 **reverse** 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 29th Day of April 2010.

**Pamela L. Hinzman
State Hearing Officer**