



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

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

September 15, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 14, 2011. 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
[REDACTED]
BoSS
WVMI

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

IN RE: -----,

CLAIMANT,

v.

ACTION NO.: 11-BOR-1404

**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 September 14, 2011 on an appeal filed June 1, 2011 and received by the Hearing Officer on July 5, 2011. The hearing was originally scheduled for August 11, 2011, but was rescheduled at the Claimant's request.

It should be noted that the Claimant's benefits have been 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

-----, Case Manager, [REDACTED]

-----, Select In-Home Services

-----, Homemaker, Select In-Home Services

Sara Birckhead, Nurse Monitor, Bureau of Senior Services

Stacy Leadman, RN, Project Manager of Long-Term Care, 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 April 6, 2011
- D-3 Potential Denial Notice dated May 6, 2011
- D-4 Denial Notice dated May 26, 2011

Claimant's Exhibits:

- C-1 Information from [REDACTED] M.D., dated May 31, 2011 and July 14, 2011
- C-2 Medical information from [REDACTED] dated July 13, 2011
- C-3 Claimant's written statement (undated)
- C-4 Information from [REDACTED] M.D., dated July 20, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Medicaid Program and underwent an annual medical evaluation to determine if she continues to meet medical eligibility criteria for the program.

- 2) West Virginia Medical Institute (WVMI) Registered Nurse Barbara Plum completed a Pre-Admission Screening (PAS) medical assessment on April 6, 2011 (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 dressing, and continence of bladder*.
- 3) The Claimant was sent a Potential Denial Notice (D-3) on May 6, 2011 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 May 26, 2011 (D-4).
- 5) Witnesses for the Claimant contended that additional deficits should be awarded in the following areas:

Physical assistance with eating- -----, Registered Nurse with Select In-Home Services, testified that the Claimant requires assistance from her homemaker in cutting up food due to arthritis.

Stacy Leadman, Registered Nurse with WVMI, testified about the PAS findings (in the absence of Barbara Plum) and referred to PAS comments which state that the Claimant denied difficulty in cutting up foods on the date of the assessment and denied a need for assistance with eating.

As the Claimant denied the need for physical assistance with eating on the assessment date, no additional deficit can be awarded in this area of functionality.

Physical assistance with grooming- The Claimant and her witnesses indicated that she requires homemaker assistance with cutting her fingernails and toenails, and also needs assistance with hair grooming.

Ms. Leadman testified that PAS notes indicate the Claimant reported the ability to perform her own hair care tasks and trim her nails on the assessment date.

As the Claimant denied a need for physical assistance with grooming on the PAS date, no additional deficit can be awarded.

One-person physical assistance with transferring- Ms. Phares testified that the Claimant experiences stiffness in her right knee and at times needs assistance in transferring from a chair.

Ms. Leadman stated that PAS notes indicate the Claimant got up from a kitchen chair without difficulty during the assessment, and reported that she can transfer in and out of bed.

Based on information provided on the date of the PAS, no additional deficit can be awarded for one-person assistance with transferring.

It should be noted that the Claimant provided Exhibits G-1 through G-4, however, this information included physician reports and hospital records dated subsequent to the PAS.

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 three (3) deficits on her April 2011 Aged/Disabled Waiver Program medical evaluation.
- 2) Information provided during the hearing does not support the awarding of additional functional deficits based on the Claimant's reported condition on the date of the PAS.
- 3) The Claimant's total number of deficits remains at three (3), rendering her medically ineligible for continued participation in 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 15th Day of September, 2011.

Pamela L. Hinzman
State Hearing Officer