



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

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

October 14, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 13, 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-1722

**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 via videoconference on October 13, 2011 on an appeal filed July 27, 2011 and received by the Hearing Officer on August 23, 2011.

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

-----, [REDACTED]
-----, [REDACTED]
-----, [REDACTED]

Sara Birckhead, Nurse Monitor, 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 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 July 6, 2011
- D-3 Potential Denial Notice dated July 11, 2011
- D-4 Denial Notice dated July 25, 2011

Claimant's Exhibits:

- C-1 Letter from ----- faxed to Board of Review on October 3, 2011
- C-2 Letter from [REDACTED] D.O., dated September 21, 2011
- C-3 Letter from [REDACTED] dated August 16, 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 Melissa Bell completed a Pre-Admission Screening (PAS) medical assessment on July 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 four (4) qualifying deficits in the areas of *physical assistance with bathing, dressing and grooming, and inability to vacate the residence in the event of an emergency*.
- 3) The Claimant was sent a Potential Denial Notice (D-3) on July 11, 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 July 25, 2011 (D-4).
- 5) Witnesses for the Claimant contended that an additional deficit should be awarded in the following area:

Physical assistance with eating- ----- with We Care Home Care Agency, testified that he did not become the Claimant's social worker until August 1, 2011. Therefore, he was not present during the PAS and did not have the opportunity to provide input at that time. ----- presented Exhibit C-2, a letter from Angela Mills, D.O., and Exhibit C-3, information from Physical Therapy Services, in support of the Claimant's request for one (1) additional deficit for physical assistance with eating. The letters indicate that the Claimant previously suffered a stroke, which affected motor skills on her left side. In addition, the Claimant broke her right wrist more than one year ago and has difficulty with right-handed tasks as well. The Claimant has been receiving physical therapy since December 2010, and the letters indicate that she experiences difficulty grasping and holding objects. The Claimant testified that she has difficulty using eating utensils and needs assistance in cutting hard foods.

The WVMI Nurse testified that – on the assessment date - the Claimant reported the ability to cut up her own foods and feed herself, but indicated that her boyfriend or homemaker prepares meals. The nurse indicated that the Claimant was able to raise her arms above her head, touch her head, and reach behind her back during the PAS. In addition, the Claimant demonstrated good bilateral grip strength, and stated that she is able to draw up and administer her insulin unassisted. PAS notes indicate that the Claimant, her case manager, her sister and a friend were present at the assessment, and the WVMI Nurse testified that she reviewed the PAS findings with those in attendance. All persons present voiced agreement with the PAS findings.

----- questioned whether the Claimant was asked if she could cut up solid foods and requested that a new PAS be completed to reassess the Claimant's functional abilities.

- 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 July 2011 Aged/Disabled Waiver Program medical evaluation.
- 2) Information provided during the hearing does not support the awarding of an additional functional deficit based on the Claimant's reported condition on the date of the PAS. The Claimant, her case manager, her sister and a friend were present during the PAS, and no information was provided to the WVMi Nurse to indicate that the Claimant required assistance with eating. The Claimant reported the ability to cut up her own food and feed herself. Therefore, no additional deficit for physical assistance with eating can be awarded and a new PAS will not be ordered.
- 3) The Claimant's total number of deficits remains at four (4), 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 14th Day of October, 2011.

**Pamela L. Hinzman
State Hearing Officer**