



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

February 10, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 8, 2012. 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
Lewis County Senior Center
BoSS
WVMI

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

IN RE: -----,

CLAIMANT,

v.

ACTION NO.: 11-BOR-2562

**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 telephone on February 8, 2012 on an appeal filed November 22, 2011 and received by the Hearing Officer on December 19, 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
-----, Claimant's Daughter-in Law/Health Care Surrogate
-----, Claimant's Daughter-in-Law
-----, Case Manager, [REDACTED] County Senior Center
-----, Homemaker RN, [REDACTED] County Senior Center
-----, Homemaker, [REDACTED] County Senior Center
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 501.5, 501.5.1 and 501.5.1.1

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 October 25, 2011
- D-3 Potential Denial Notice dated November 1, 2011
- D-4 Denial Notice dated November 17, 2011
- D-5 Pre-Admission Screening (PAS) completed on December 2, 2010

Claimant's Exhibits:

- C-1 Agreement of Health Care Surrogate authorized on January 28, 2010
- C-2 Aged and Disabled Waiver Plan of Care/Member Assessment
- C-3 Aged and Disabled Waiver Service Plan
- C-4 Homemaker Worksheet
- C-5 Information from [REDACTED] M.D., dated November 10, 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 October 25, 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 inability to vacate the building in the event of an emergency, and physical assistance with bathing and grooming.
- 3) The Claimant was sent a Potential Denial Notice (D-3) on November 1, 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 November 17, 2011 (D-4).
- 5) Witnesses for the Claimant contended that additional deficits should be awarded in the following areas:

Physical assistance with dressing- The Claimant's witnesses testified that the Claimant requires physical assistance with dressing, as she cannot button or zip clothing. -----, Homemaker with the [REDACTED] County Senior Center, testified that she assists the Claimant with dressing regularly. -----, Case Manager with the [REDACTED] County Senior Center, provided Exhibits C-2, an Aged and Disabled Waiver Plan of Care dated October 24, 2011, which indicates that the Claimant requires assistance with dressing. In addition, ----- presented Exhibits C-3, an Aged and Disabled Waiver Service Plan dated October 24, 2011, and a Homemaker Worksheet dated October 2011, which indicate that the Claimant requires assistance with dressing.

The WVMI Nurse testified that the Claimant, her Homemaker, her daughter-in-law -----, and her son-in-law -----were present on the date of the assessment. While the Claimant had been awarded a deficit for physical assistance with dressing on her December 2010 PAS (D-5), she was rated as Level I (self/prompting) on the November 2011 assessment because she reported the ability to fully dress herself. PAS notes indicate that both the Claimant and her Homemaker stated that she had been able to dress herself unassisted during the month prior to the PAS. It should be noted that the Claimant had recently been discharged from a nursing facility at the time the 2011 PAS was completed. The WVMI Nurse indicated she reviewed the PAS with those present at the conclusion of her visit and no one voiced disagreement with her findings.

The Homemaker stated she does not believe she indicated that the Claimant was able to dress herself at the time of the PAS. She stated that she had not known whether she could provide information to contradict the Claimant at the time of the PAS, and felt she would be

overstepping her boundaries in correcting the Claimant. The Homemaker also indicated that she had left the residence before the entire PAS was complete.

Continence of bladder- The Claimant's witnesses indicated that she is frequently incontinent of urine and wears adult incontinence products at night. The Claimant's Plan of Care (C-2) indicates that she is partially incontinent of urine. The Service Plan (C-3) indicates that the Claimant requires assistance with toileting because she has "some incontinence." The Claimant's Homemaker stated that she must wash the Claimant's clothing on a daily basis.

The WVM Nurse testified that the Claimant reported having bladder incontinence, especially at night, and indicated that she had one accident in the past week and 2-3 accidents in the month prior to the assessment. Therefore, she was rated as occasionally incontinent. She had been rated as totally incontinent on the 2010 PAS.

The Claimant's daughter-in-law and Health Care Surrogate ----- testified that she could not be present during the October 2011 PAS, and her husband, who assists in taking care of the Claimant, was also not present to provide information.

----- stated that the Claimant, who has vascular dementia, has good days and bad days. She submitted Exhibit C-5, a statement from [REDACTED] M.D., which indicates that the Claimant needs assistance with activities of daily living for her safety and well-being. However, the statement does not provide information concerning the Claimant's specific areas of need.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (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 nursing home level of care.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (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 501.5.1.1 (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 – (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 October 2011 Aged/Disabled Waiver Program medical evaluation.
- 2) As a result of information provided during the hearing, zero additional deficits are awarded to the Claimant. No information was provided to the WVMI Nurse at the time of the assessment to indicate that the Claimant required assistance with dressing, or experienced total incontinence of bladder.

- 3) As no additional deficits can be awarded, the Claimant continues to lack the required deficits 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 10th Day of February, 2012.

**Pamela L. Hinzman
State Hearing Officer**