



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 21, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 19, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver 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.

The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to 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. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b (11/1/03)].

The information submitted at your hearing reveals that your medical condition continues to require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community-Based Services Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
WVMI
BoSS

CM, CCIL

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on April 21, 2005 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 convened on April 19, 2005 on a timely appeal filed January 5, 2005.

It should be noted here that benefits under the Medicaid Title XIX Waiver (HCB) Program have continued.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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 Homemaker

_____, Homemaker RN

_____, CM, CCIL

Debbie LeMasters, RN, WVMI

Kay Ikerd, RN, BoSS (by phone from BoSS)

Presiding at the hearing was Thomas E. Arnett, 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 claimant continues to be medically eligible for services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual ' 560 & 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department=s exhibits

- D-1 Aged/Disabled Home and Community Based Services Manual ' 560 & 570.
- D-2a Notice of Potential Denial dated 12/7/05.
- D-2b Notice of Termination dated December 30, 2004.
- D-3 Medical Assessment, PAS-2000, dated 11/19/04.
- D-4 Correspondence from [REDACTED] M.D.

VII. FINDINGS OF FACTS:

1. The Claimant=s Aged & Disabled Waiver case, hereinafter ADW, was undergoing an annual medical reevaluation to verify continued medical eligibility.
2. WVMi completed a medical assessment (D-3) on November 19, 2004 and determined that the Claimant is no longer medically eligible to participate in the ADW Program.
3. The Claimant was notified of a Potential Denial on December 7, 2004 (D-2a) and advised that she had two weeks to submit additional medical information.
4. On December 30, 2004 a termination notice (D-1) was sent to the Claimant. This notice includes some of the following pertinent information:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate/deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission screening Form), indicated deficiencies in 4 areas – Bathing, Dressing, Grooming, Continence.

5. Debbie LeMasters reviewed the Medical Assessment (D-3) that she completed on the Claimant on November 19, 2004, and stated that her primary diagnosis is renal insufficiency, dialysis and kidney rejection. Ms. LeMasters testified that her assessment of the Claimant revealed four (4) program qualifying deficits – bathing, dressing, grooming and incontinence of bowel.
6. The Claimant and her representatives contend that an additional deficit should have been identified under #25 as she is physically unable to vacate her residence in the event of an emergency.
7. Ms. LeMasters testified that she assessed the Claimant's ability to vacate in an emergency and cited section #38, Nurse's overall comments, in support of not assigning a deficit in this area.

Section #38 includes the following - client leaves her home and walks down ramp and out to van that picks her up for dialysis without hands on, she could vacate building in emergency with supervision, she stated, "I would need hands on to get out if fell I could not get up."

Ms. LeMasters testified that she reviewed the additional information (D-4) from Dr. [REDACTED] however, this information failed to change her findings.

8. The Claimant testified that she told Ms. LeMasters that she is not physically able to vacate her residence in the event of an emergency. She indicated that she is often so weak after dialysis that she must go directly to bed and that she would be unable to get out of bed during these periods. The Claimant also testified that she has a history of falls and that the fire department has had to come and help her back up.
9. Information found in exhibit D-4 confirms that the Claimant dialyzes three times a week and that she experiences some dizziness and weakness associated with her dialysis. It is the opinion of Dr. [REDACTED] that the Claimant would be unable to vacate her home in case of a fire.
10. Testimony and documentation establish a deficit under #25 - the Claimant is physically unable to vacate her home in the event of an emergency.

VIII. CONCLUSIONS OF LAW:

1. Aged/Disabled Home and Community Based Services Manual ' 570 - Program Eligibility for Client:
Applicants for the ADW Program must meet all of the following criteria to be eligible for the Program:
 - C. Be approved as medically eligible for NF level of care.

2. Aged/Disabled Home and Community Based Services Manual ' 570.1.a. - *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 ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

3. Aged/Disabled Home and Community Based Services Manual ' 570.1.b. - *Medical Criteria:*

An individual must have five (5) deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. # 24: Decubitus - Stage 3 or 4
- B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
- C. #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)
 - Grooming--- Level 2 or higher (physical assistance or more)
 - Dressing ---- Level 2 or higher (physical assistance or more)
 - Continence-- 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 assist in the home)
 - Walking----- Level 3 or higher (one person or two person assist 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)
- D. #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.
- E. #28: The individual is not (c) capable of administering his/her own medications.

4. In accordance with the aforementioned policy guidelines, the Claimant demonstrates five (5) program qualifying deficits and therefore continues to meet the medical eligibility criteria for participation in the Aged & Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate your benefits and services 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.