



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, West Virginia 26241

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 6, 2005

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 5, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your medical eligibility under the Aged/Disabled Home and Community-Based Services 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.

Eligibility and benefit levels for the Aged/Disabled Home and Community-Based Services Waiver Program are determined based on current regulations. One of these regulations specifies that in order to be eligible for the program, an individual must be approved as medically eligible for a nursing facility level of care (WVDHHR Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual Section 570).

Information submitted at the hearing revealed that your medical condition does not require a sufficient number of services and a degree of care required to medically qualify you for the Aged/Disabled Home and Community-Based Services Waiver Program.

Therefore, it is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your benefits under the Aged/Disabled Home and Community-Based Services Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Board of Review
[REDACTED] CWVAS
Oretta Keeney, WVMI
Libby Boggess, RN, BoSS

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____

ADDRESS: _____

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 January 6, 2005 for _____.

This hearing was held in accordance with provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was originally convened on January 5, 2005 on a timely appeal filed September 1, 2004.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE

The program entitled Aged/Disabled Home and Community-Based Services Waiver is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 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 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, CWVAS
Kay Ikerd, RN, BoSS
Sue Bailey, RN, WVMi

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

The question to be decided is whether the Department took the correct action in denying the Claimant's Aged/Disabled Home and Community-Based Services Waiver application based on failure to medically qualify.

V. APPLICABLE POLICY

WVDHHR Aged/Disabled Home and Community-Based Services Waiver Policy and Procedure Manual, Sections 560 and 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- D-1 WVDHHR Aged/Disabled Home and Community-Based Services Waiver Policy and Procedure Manual, Sections 560.1, 570, 570.1, 570.1.a and 570.1.b
- D-2 WVDHHR Pre-Admission Screening (PAS) 2000 form dated August 6, 2004
- D-3 Notice of Decision from WVMi dated August 24, 2004

VII. FINDINGS OF FACT

1. A PAS 2000 (D-2) was completed for the Claimant on August 6, 2004.
2. The PAS 2000 revealed that the Claimant does not have five (5) deficits as required to meet medical criteria for a nursing facility level of care and a WVMi Notice of Decision (D-3) was sent to the Claimant on August 24, 2004.

3. Ms. Bailey reviewed the PAS-2000 and indicated that incontinence of bowel was the Claimant's only qualifying deficit.
4. The Claimant testified that she eats by herself, but her daughter mainly prepares her meals. The Claimant also stated that her daughter helps her bathe because she can't enter the bathtub by herself. She said she has taken incorrect dosages of medication. Ms. Bailey pointed out that inability to prepare food does not qualify as a deficit for the Aged/Disabled Waiver Program. Nursing comments on the PAS 2000 indicate the Claimant said she is able to cut her own meats and open bottles, take showers by herself and dress herself.

CONCLUSIONS OF LAW

1. WVDHHR Aged/Disabled Home and Community-Based Services Waiver Policy and Procedure Manual Section 570 (D-1) states one of the program eligibility requirements is that the client must be approved as medically eligible for a nursing facility level of care.
2. Section 570.1.b regarding eligibility criteria for the Nursing Home and Aged/Disabled Waiver Programs specifies that in order to qualify for a nursing facility level of care an individual must have a total of five (5) deficits. These deficits are derived from a combination of the following assessment elements of the PAS 2000:

Question #26

- (1) Eating - Level 2 or higher (physical assistance to get nourishment, not preparation)
- (2) Bathing - Level 2 or higher (physical assistance or more)
- (3) Grooming - Level 2 or higher (physical assistance or more)
- (4) Dressing - Level 2 or higher (physical assistance or more)
- (5) Continence - Level 3 or higher (must be incontinent)
- (6) Orientation - Level 3 or higher (totally disoriented, comatose)
- (7) Transferring - Level 3 or higher (one person or two person assist in the home)
- (8) Walking - Level 3 or higher (one person assist in the home)
- (9) 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)

Question # 24

Decubitus - Stage 3 or 4

Question #25

In the event of an emergency, the individual is mentally (c) or physically (d) unable to vacate a building.

Question #27

Individual has skilled needs in one or more of these areas – suctioning (g), tracheostomy (h), ventilator (i), parenteral fluids (k), sterile dressings (l), or irrigations (m). (The use of oxygen is not a deficit.)

Question #28

The individual is not (c) capable of administering his/her own medications.

VIII. DECISION

In order to medically qualify for Aged/Disabled Waiver services, an individual must have a total of five (5) qualifying deficits in specific categories of nursing services.

These deficits are determined from a combination of assessment elements on the PAS 2000. The PAS 2000 reveals that the Claimant has one (1) program qualifying deficit in the area of bowel incontinence. The Claimant testified she cannot prepare her own food, however, inability to engage in food preparation is not a qualifying deficit for the Waiver Program. The Claimant also described problems with entering/exiting the bathtub and medication dosage. Even if accepted as deficits, the Claimant would continue to fall short of the five (5) qualifying deficits required for program eligibility.

Because five (5) qualifying deficits could not be established as a result of the PAS-2000 and information submitted during the hearing, the Claimant does not meet the medical qualifications for Aged/Disabled Waiver services.

Therefore, it is the decision of the State Hearing Officer to **uphold** the action of the Department to deny the Claimant's application for the Aged/Disabled Home and Community-Based Services Waiver Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.