



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Joe Manchin III
Yeager Walker
Governor
Secretary

Martha

Board of Review

150 Maplewood Avenue
Lewisburg, West Virginia 24901
Telephone (304) 647-7476 Fax: (304) 647-7486

June 8, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 2, 2005 for the Aged/Disabled Home and Community Based Services Waiver (ADW) Program. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services.

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 Home and Community Based Services Waiver (ADW) Program is based on current policy and regulations. One of these regulations state as follows: An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of assessment elements on the PAS. (Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003)

The information which was submitted at your hearing revealed that after review of the current PAS-2000, you do not meet the five (5) deficits needed in order to qualify medically for the ADW Program.

It is the decision of the State Hearing Officer to uphold the proposal of the Agency to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] All Care Home & Community Services, Inc.
Linda Wright, BoSS
Oretta Keeney, WVMI

**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 June 2, 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 was convened on June 2, 2005 on a timely appeal, filed February 3, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW)s set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

Michelle Wiley, RN, WVMI (By Telephone)
Linda Wright, RN, BoSS (By Telephone)

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the claimant continues to meet the medical requirements needed to receive ADW services.

V. APPLICABLE POLICY:

Section 570 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part:

Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financially eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Section 570.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

A QIO under contract to BMS determines medical eligibility for the A/D Waiver Program.

Section 570.1.a of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

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 level of care (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.

Section 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads:

An individual must have five 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 persons assist in the home)

Walking - Level 3 or higher (one 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 - (g) suctioning,

(h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations.

E. #28: Individual is not capable of administering his/her own medications.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits:

Exhibit D-1) Sections 570, 570.1.a, and 570.1.b of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003

Exhibit D-2) Hearing Request dated by claimant 01/19/05

Exhibit D-3) Form PAS-2000 dated 10/21/04

Exhibit D-4) Notification letter dated 01/13/05

Exhibit D-5) Notice of potential denial dated 12/02/04

Exhibit D-5) Additional Information submitted from Dr.

[REDACTED] CM

VII. FINDINGS OF FACT:

1) The claimant is a recipient of ADW services.

2) A medical assessment was completed 10/21/04.
(Exhibit D-3) The claimant was notified in a letter dated 01/13/05 that

services were being terminated. Reason:

Only two deficits were found during the assessment - bathing and grooming.

(Exhibit D-4) The claimant requested a hearing 02/03/05. (Exhibit D-2)

3) Michelle Wiley reviewed the PAS-2000 completed 10/21/04 (Exhibit D-3) The findings were:

#24 No Decubitus

#25 In the event of an emergency, the individual can vacate the building

independently

#26a Eating: Level 1 Self/Prompting

#26b Bathing: Level 2 Physical Assistance

#26c Dressing: Level 1 Self/Prompting

#26d Grooming: Level 2 Physical Assistance:

#26e Bladder: Level 2 Occasional Incontinence

#26f Bowel: Level 1 Continent

#26g Orientation: Level 1 Oriented

#26h Transferring: Level 2 Supervised/Assistive Device

#26i Walking: Level 2 Supervised/Assistive Device

#26j Wheeling: Level 1 No Wheelchair

#27 Special Needs - Inhalation Therapy

#28 Individual is capable of administering her own medication.

The claimant was the only one present during the assessment. Two deficits were

Found - physical assistance with bathing and grooming. The assessment was

discussed with the claimant and she agreed with the findings.

4) Ms. Wiley testified that the claimant told her during the assessment she could

vacate her home in the event of an emergency. When Ms. Wiley left the home, the

claimant ambulated outside of the home independently (without any assistance).

When she evaluated her in the home, she ambulated holding on to furniture. She

had a cane but did not use the cane during the visit. The claimant reported she

administers her own medication. She reported she did not need reminders to take her medication.

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5) There are concrete steps outside that the claimant has to navigate in order to

vacate her residence. Ms. _____, Ms. _____, and Ms. _____ all

testified they do not believe the claimant could get down the steps in the event of an emergency.

6) Ms. Wiley testified she observed the claimant ambulate up the steps when she left the home after the assessment. The claimant told Ms. Wiley she can ambulate up the steps unless it is raining.

7) At the time of the assessment, the claimant could dress herself.

8) Testimony revealed the claimant fell in her home 12/23/04. She was placed in a nursing home 12/24/04 and was discharged 04/02/05.

VIII. CONCLUSIONS OF LAW:

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

2) Two deficits, bathing and grooming, were found on the assessment completed 10/21/04.

3) There was convincing testimony from Ms. _____ and Ms. _____ that the claimant would be physically unable to vacate her home in the event of an emergency. The claimant would only have a total of three deficits with the addition of this deficit. .

4) The required five (5) deficits could not be established on the evaluation completed 10/21/04. Therefore, the claimant does not meet the medical qualifications for Aged/Disabled Waiver services.

IX. DECISION:

It is the finding of the State Hearing Officer that based on the evaluation completed 10/21/04 the claimant does not continue to meet the medical criteria for the ADW Program. The Agency is upheld in the proposal to terminate the claimant's services under the Aged/Disabled Home and Community-Based Services Waiver (ADW) Program. The action described in the notification letter dated January 13, 2005 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29