



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
April 28, 2005

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

[REDACTED]
Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 23 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue your benefits/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.

Medicaid, Aged/Disabled (HCB) Title XIX Waiver is granted to those individuals who continue to meet all eligibility requirements. 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. 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. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b (11/1/03)].

The information which was submitted at your hearing failed to establish 5 qualifying deficits.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to discontinue your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program as set forth in the December 30, 2004 notification letter.

Sincerely,

Ron Anglin
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Libby Boggess, BoSS
Oretta Keeney, WVMI
[REDACTED] Central WV Aging Services

**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 25, 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 March 23, 2005 on a timely appeal received by the State Hearings Officer February 16, 2005. 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

_____, homemaker

_____, RN, _____ Senior Center

_____, CM, Central WV Aging Services

Kay Ikerd, RN, BoSS, (by phone)

Jane Meadows, RN, WVMI (by phone)

Presiding at the hearing was Ron Anglin, 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 ' 570- 570.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

E-1- A/D Waiver Manual 560.1- 570.1.b

E-2- WVMl Independent Review (PAS) 11/18/04

E-3- Notification 12/7/04 (Potential Denial)

E-4- Notification, 12/30/04(Termination)

C-1- Statements from _____ and _____ and _____, 3/22/05.

C-2- SSA notice of Decision, 10/15/01

VII. FINDINGS OF FACT:

(1) The claimant=s A/D Waiver case was due for an annual review and a WVMl Independent Review (E-2) was completed by the WVMl on November 18, 2004. WVMl determined that the claimant was no longer medically eligible for Waiver services and a notification of potential closure was mailed December 6, 2004. A termination notification was then mailed to the claimant December 30, 2004. A hearing request dated January 10, 2005 was received by BMS January 10, 2005 and by the BOR/Hearings Officer February 16, 2005. The claimant was notified of the hearing date in a notification dated February 22, 2005. The hearing was convened March 23, 2005. Benefits have been continued pending a hearing decision.

(2) During the hearing Exhibits as noted in Section VI above were presented.

(3) Kay Ikerd provided information concerning waiver program policy and requirements from Exhibit E-1. Argues that the medication administration section refers to medications taken daily. Morphine pump maintenance would fall under Pro/Tech needs and is not a deficit.

(4) Jane Meadows noted from the evaluation (E-2) which she completed 11/18/04 in the claimant=s home. Claimant found to be physically unable to vacate in an emergency. Under item 26, claimant had qualifying deficits in bathing, dressing and transferring. Claimant only requires supervision/prompting with medication administration, which is not considered a deficit. Total deficits found were 4. Morphine pump is more like out- patient procedure and not part of his daily medication. Claimant ambulated in the home with a quad cane.

(5) _____ testified that he has been on the program about 3 years at 20 hours per week. He receives SSI. He had been on the Personal Care Program prior to entering on the Waiver Program.

(6) _____ testified that claimant has a morphine pump which he must go to Morgantown (Ruby) to have filled. He cannot do this on his own. Feels this would be a deficit under medication administration. Notes that he has fallen and needs more help with walking.

(7) _____ testified the claimant has fallen several times. She has gone to his home several times on weekends to help him.

(8) _____ testified that he needs assistance to get ready to go out to the Dr. Uses furniture, walls etc. to get around the home.

VIII. CONCLUSIONS OF LAW:

(1) Aged/Disabled Home and Community Based Services Manual ' 570 reveals that individuals medically eligible for the ADW program must meet the same criteria as those medically eligible for a nursing facility level of care.

(2) Aged/Disabled Home and Community Based Services Manual ' 570.1.b. Medical Criteria: 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 medical evaluation- Decubitus - Stage 3 or 4; in the event of an emergency, the individual ability to vacate a building; functional abilities of individual in the home (eating, bathing, grooming, dressing, continence, orientation, transferring, walking, wheeling); skilled needs; and ability to self-administer medication.

IX. DECISION:

The agency acknowledged 4 qualifying deficits – vacating a building, bathing, dressing and transferring. Testimony concerning medication administration and walking did not successfully demonstrate functional deficits rising to the level of qualifying. The use of the morphine pump would seem to qualify as a professional need and not therefore a deficit in that category. Evidence suggests that while the claimant has had several falls he is able to walk within his home with minimal aid, by use of his cane and environmental objects. .

In conclusion, evidence offered established only 4 qualifying deficits. Eligibility for the program requires 5 qualifying deficits. This number of deficits is required to demonstrate that an individual requires the level of care provided in a nursing facility or the Medicaid (HCB) Waiver Program. I am therefore ruling to **uphold** the action of the Agency to terminate benefits under the Medicaid Waiver Program as set forth in the December 30, 2004 notification.

The claimant is advised, with the aid of the case management agency, to seek services from other programs offering care at a level less than that of a nursing home.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.