



Joe Manchin III
Governor

State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, West Virginia 24901
Telephone (304) 647-7476 Fax: (304) 647-7486

Martha Yeager Walker
Secretary

June 7, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 3, 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] Attorney at Law
Kelly Ambrose, Senior Assistant Attorney General, BMS
[REDACTED] All Care Home & Community Services, Inc.
Kay Ikerd, BoSS
Oretta Keeney, WVMI

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 May 3, 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 May 3, 2005 on a timely appeal, filed January 4, 2005.

It should be noted that this hearing was originally scheduled for April 13, 2005. The claimant obtained legal representation and the hearing was rescheduled at the claimant's request for May 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:

_____, Attorney at Law, Legal Aid of WV
_____, Case Manager, All Care Home & Community Services, Inc.

Kay Ikerd, RN, BoSS (By Telephone)
Christine Miller, RN, WVMi (By Telephone)
Kelly Ambrose, Senior Assistant Attorney General, BMS (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 financial 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)

Contenance - 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) Form PAS-2000 dated 11/12/04
Exhibit D-3) Hearing Request received 01/04/05
Exhibit D-4) Notification letter dated 12/21/04
Exhibit D-5) Notice of potential denial dated 12/06/04

Claimant' Exhibits:

Exhibit C-1) Letter from _____ dated 12/28/04
Exhibit C-2) Letter from _____

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of ADW services.
- 2) A medical assessment was completed 11/08/04. (Exhibit D-2)
The claimant was notified in a letter dated 12/21/04 that services were
being terminated. Reason:
Only three deficits were found during the assessment -
bathing, dressing and grooming.. (Exhibit D-4) The claimant requested a
hearing 01/04/05. (Exhibit D-3)
- 3) Chris Miller reviewed the PAS-2000 completed 11/08/04
(Exhibit D-2) The findings were:
#24 No Decubitus
#25 In the event of an emergency, the individual can
vacate the building with supervision.

#26a Eating: Level 1 Self/Prompting:
#26b Bathing: Level 2 Physical Assistance:
#26c Dressing: Level 2 Physical Assistance:
#26d Grooming: Level 2 Physical Assistance:
#26e Bladder: Level 1 Continent
#26f Bowel: Level 1 Continent
#26g Orientation: Level 1 Oriented
#26h Transferring: Level 1 Independent
#26i Walking: Level 1 Independent
#26j Wheeling: Level 1 No Wheelchair
#27 Special Needs - Yes - Blood sugar Check 1 or 2
times per week
#28 Individual is capable of administering her own
medication .

Present during the assessment was [REDACTED], the claimant's homemaker at the time. Both the claimant and homemaker agreed with the findings.

4) Ms. Miller testified that the claimant sat next to her during most of the assessment as her hearing aide was being repaired. The claimant did not have trouble communicating. The claimant and the homemaker concurred with the functional assessment levels.

5) Under transferring, the claimant testified she helps herself up/down out of the chair as she has no one to help her. She is not as strong as she has been There have been times she could not get up. This happens when her system gets down low. She uses a cane more outside as she can hold on to the furniture in her trailer. Her neighbors help her when they can. The neighbors help her with housework, take her to the store or doctors' office, and last year helped her with a garden. She can cut her food and she gets to the bathroom in time before an accident. Lately, accidents happen more often.

6) Ms. _____ testified she helps the claimant some. She mows her grass, goes to the store for her, and takes her food if she doesn't feel like cooking, There are times she has been in her home and has found the claimant has left the gas cooking stove on. She has had to help the claimant up out of a chair two or three times per week. The day the nurse was there was one of her good days. She has noticed the claimant has been having more accidents with her bladder when she takes her to the store. It has only happened with her twice. There are some days she could get out of the house in case of an emergency and some days she could not. She gets scared easily and doesn't realize what she

needs to do. Her blood
check should be daily, not twice a week. The claimant gets
her medication mixed
up and does not take it appropriately.

7) Mr. _____ testified he sees the claimant everyday. She is
getting a little bit
senile. When he takes her out, you have to hold on to her
from the trailer to the
truck into the store until she can get a hold of a buggy.
He has had to help her out
of a chair. He has noticed incontinence of the ladder when
he has taken her out.
There will be a wet seat. This depends on how long she is
out of the home.

8) Ms. _____ testified she cooks food for the claimant as she
cannot get
around on her foot.

9) Ms. [REDACTED] testified the longer she has spent time with
the claimant she is not
as "sure footed" as she has thought.

10) Ms. Miller testified she collected information at the time
of the assessment
regarding the claimant's continence/incontinence. Both the
claimant and
homemaker denied the claimant had trouble with
incontinence of bladder or
bowel. She specifically asked if the claimant used
protective pads or garments.
Both denied the use of these items due to incontinence.

11) In summary, the claimant's argument is she needs help with
walking,
transferring, as well as some bladder/bowel incontinence.
Her special needs are
more - needs blood sugar checked daily as opposed to twice
a week

12) The Department's position is that at the time of the
assessment, the claimant
met three deficits. Those were in areas of bathing,
grooming and dressing.
Although she has other issues, such as her hearing, this is
not considered a
deficit.

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.

12/08/04 - physical 2) Three deficits were found on the assessment completed
assistance with bathing, grooming and dressing.

3) There was no clear, convincing testimony or evidence

presented to show that at the time of the assessment, the claimant needed one person assist for transferring or walking in her home, was incontinent of bladder/bowel, or had a skilled need which meets the criteria to score as a deficit. (Refer to Part V.). She was also assessed as needing supervision to vacate her home in the event of an emergency which is the appropriate finding.

4) The required five (5) deficits could not be established. 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 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 December 21, 2004 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision
Form IG-BR-29