



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 6165
Wheeling, WV 26003

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 7, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 29, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue services under the Aged Disabled Waiver, A/DW, 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 for the A/DW program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. (Aged/Disabled (HCB) Services Manual 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the November 2, 2005 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BOSS
CCS
WVMI

Brown, Legal Aid of WV
Kalwar, Office of Attorney General, BMS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,
Claimant,

v.

Action Number: 06-BOR-1061

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on June 29, 2006 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 29, 2006 on a timely appeal, filed March 9, 2006.

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 Waiver 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's Witnesses:

_____ - claimant

Nan Brown – Attorney Legal Aid of WV

_____ – Catholic Community Services Case Manager

_____ – RN Weirton Health Care

_____ – Homemaker Weirton Health Care

Department's Witnesses:

Nisar Kalwar – Attorney General's Office by phone

Kay Ikerd – RN Bureau of Senior Services by phone

_____ - WVMI RN by phone

_____ student from WVU Law School, doing a placement with Legal Aid of WV observed the proceedings.

Presiding at the Hearing was Melissa Hastings, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program utilizing the Aged/Disabled Home and Community Based Service Program criteria effective November 1, 2005.

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V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §570**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Pre-Admission Screening For Aged/Disabled Waiver Services assessment date November 2, 2005

D-2 West Virginia Medical Institute Inc. Examination Request dated September 30, 2005

D-3 Notice of Potential Denial dated November 9, 2005

D-4 Notice of Denial dated November 29, 2005

Claimant's Exhibits:

C-1 Pre-Admission Screening for Aged/Disabled Waiver Services assessment date October 22, 2004

C-2 Aged/Disabled Home and Community Based Service Manual Section 580 through 580.2c dated November 1, 2003

Joint Exhibits:

J-1 Aged/Disabled Home and Community Based Service Manual section 503 through 570.1.c with accompanying cover memo dated September 30, 2005 from Nancy V. Atkins, Commissioner

J-2 Aged/Disabled Home and Community Based Service Manual section 570.1 through 570.1.d dated November 1, 2003

VII. FINDINGS OF FACT:

- 1) Mr. _____ is a 66 year-old male. He is an active participant in the A/DW program. His A/DW eligibility was undergoing an annual evaluation on November 2, 2005.
- 2) A WV Medical Institute (WVMI) Nurse _____ completed a Pre-Admission Screening (D1) in the claimant's home with the claimant, claimant's homemaker, _____, and claimant's case manager, _____ from Catholic Community Services. The evaluating nurse determined that the claimant had only three (3) qualifying deficits. She assigned a deficit for Mr. _____'s need for physical assistance in bathing, grooming and dressing.
- 3) The primary diagnosis listed on the Pre-Admission Screening (D1) was Diabetes, hypertension, coronary artery disease, degenerative joint disease and arthritis.
- 4) Claimant's representative contends that claimant should have been awarded deficits in three additional areas: Ability to Vacate the Building, Eating and Medication Administration.
- 5) The Pre-Admission Screening form (D1) section 25a Eating was evaluated at a level 1 Self/Prompting. Nurse's comments on page 4 of 4 of the PAS (D1) indicates that claimant "denied having difficulty holding things in his hand and states he can feed himself as well as cut up his own food". During cross examination Ms. _____ confirmed that during her visit she did not see Mr. _____ eat or cut up food.
- 6) _____, claimant's homemaker, provides in home care for Mr. _____ Monday, Tuesday, Thursday and Friday from 8:00 AM through 11:30 AM. On Wednesday she provides the care from 8:00 AM through 3:00 PM. She has been providing this care since 2002. While in the home she prepares 3 meals for Mr. _____ and states that Mr. _____ cannot cut up his own food. Cannot grasp eating utensils so eats with his hands. Also stated that she placed Mr. _____'s eye drops for glaucoma in his eyes each day as he could not do them himself.. Learned recently that she should not be administering this medication to Mr. _____ so ceased doing it. Indicates that Mr. _____'s neighbor is now administering the eye drops to him.
- 7) _____ RN from Weirton Health Care has been to Mr. _____'s home ten times since Mr. _____ was approved for the Aged/Disabled Waiver Program in March 2002. She confirms that Mr. _____ is unable to cut up his own food and won't use

eating utensils. In her professional opinion Mr. _____ is not a total feed but does need assistance with feeding. She also confirmed that Mr. _____'s neighbor administers eye drops to Mr. _____ each day.

- 8) The Pre-Admission Screening Form (D1) indicates that Mr. _____ ambulates in his home using a cane, furniture and walls and that Ms. _____ observed Mr. _____ rising from chair and moving across the room during her evaluation. Both Ms. _____ and Ms. _____ confirm this but also state that Mr. _____ is very unsteady on his feet and has a tendency to fall backwards. Ms. _____ states that she assists Mr. _____ out of a chair as needed.
- 9) The Pre-Admission Screening Form (C1) indicates Mr. _____ was previously evaluated and approved for the Aged/Disabled Waiver Program on October 22, 2004.
- 10) Aged/Disabled Home and Community Based Services Manual Section 580.2a (C2) requires re-evaluations for medical necessity be conducted annually for each waiver participant. The case management agency is responsible for submitting an updated evaluation form to the agency no later than 15 days prior to the expiration of the current approved PAS.
- 11) West Virginia Medical Institute Incorporated Examination Request (D2)) has a completion date of September 30, 2005 and received dates of October 3, 2005 and October 5, 2005. All of these dates fall within the prescribed time frames for submission of forms for reevaluation.

- 9) Aged/Disabled Home and Community-Based Services Manual Section 570 (J-1)-Program Eligibility for client:

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

- C. Be approved as medically eligible for NF Level of Care.
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- 10) Aged/Disabled Home and Community-Based Services Manual Section 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 A/DW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term services needs.
 - C. The medical eligibility determination process is fair, equitable and consistently applied throughout the state.

11) Aged/Disabled Home and Community-Based Services Manual Section 570.1.b – Medical Criteria:

An individual must have five deficits on the PAS to qualify medically for the A/DW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

A. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)

B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).

C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).

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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)

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 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. 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. (Item 26 on the PAS 2005)

E. The individual is not capable of administering his/her own medications is defined as an individual is not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program.

- 2) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on November 2, 2005. The WVMI nurse assigned the claimant three (3) qualifying deficits in the areas of bathing, dressing , and grooming utilizing Aged/Disabled Home and Community Based Services manual criteria effective November 1, 2005.
- 3) Evidence shows that Mr. _____ has prescription eye drops for a glaucoma condition administered daily to him by a neighbor as he has difficulty administering them to himself. This meets the definition required to receive a deficit in the Medication Administration category as found in Aged/Disabled Community Based Service policy section 570.1b effective November 1, 2005.
- 4) The evaluating nurse based her assessment of level one for eating based on Mr. _____'s statements regarding his ability to feed himself and cut up his own food. The Pre-Admission Screening form (D1) page one indicates that Mr. _____ is mildly mentally challenged which makes his statements questionable. Credible testimony of Ms. _____, claimant's longtime homemaker, and Ms. _____ the supervising RN, both indicate that Mr. _____ does need assistance with cutting his food and he has difficulty grasping eating utensils . As a result of this testimony a level 2 Physical Assistance should be assigned for Mr. _____ and a deficit awarded.
- 5) Ability to vacate a building category was appropriately determined based on policy requiring a level 3 assessment in walking and/or a level 3 assessment in orientation. Ms. _____ observation of Mr. _____'s movements within the home combined with the testimony of both Ms. _____ and Ms. _____ confirm that the assignment of a level 2 Supervised/Assistive Device in the category of walking was appropriately determined. The issue of Mr. _____'s orientation was not under dispute.
- 6) Whereas the Claimant exhibits deficits in five (5) of the specific categories of nursing services, the Claimant's continued medical eligibility for participation in the Aged/Disabled Waiver Services Program is established.

IX: DECISION:

It is the decision of the State Hearing Officer to reverse the proposal of the Agency to terminate your benefits and services under the Aged/Disabled Services Program. The Department is to assess and assign points in determining the level of care to include eating and medication administration.

As the claimant has been found eligible for continued services under the Aged/Disabled Home and Community Based Services Manual effective November 1, 2005 the issue concerning utilization of policy prior to that date is considered moot.

X: RIGHT OF APPEAL

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of July 2006.

Melissa Hastings
State Hearing Officer