



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

August 1, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 25, 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 December 28, 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
CCIL
WVMI

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

_____,
Claimant,

v.

Action Number: 06-BOR-1078

**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 July 25, 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 July 25, 2006 on a timely appeal, filed February 15, 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
- _____ - Coordinating Council for Independent Living Case Manager
- _____ - Nurse Panhandle Support Services
- _____ - Claimant's daughter

Department's Witnesses:

- Kay Ikerd - Nurse Bureau of Senior Services by phone
- _____ - Nurse WVMi by phone

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** Aged/Disabled Home and Community based Services Manual §570,570.1 a,b
- D-2** Pre-Admission Screening, PAS, completed December 28, 2005 with Evaluation Request form dated December 1, 2005
- D-3** Notice of Potential Denial dated January 4, 2006
- D-4** Notice of Denial dated January 20, 2006

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 76 year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on December 28, 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 RN, claimant's case manager, and claimant's daughter. The evaluating nurse determined that the claimant had 4 (four) qualifying deficits. She assigned a deficit for Ms. _____'s need for physical assistance in eating, bathing, grooming and dressing.
- 3) The primary diagnosis listed on the Pre-Admission Screening (D1) was Chronic Pulmonary Obstructive Disease and Asthma.
- 4) Claimant's representative contends that claimant should have been awarded deficits in the areas of Urinary Continence and Medication Administration.
- 5) The Pre-Admission Screening form (D2 section 25c) Continence/Bladder was evaluated at a level 2 Less than Total Incontinence. Nurse's comments on page 4 of 4 of the PAS (D2) indicate that claimant wears depends and pads due to incontinence. Knows when she has to go to bathroom but can't get there fast enough. Claimant went to bathroom during the assessment. Ms. _____'s testimony received during this hearing confirmed that claimant did go to the bathroom during the assessment but that claimant's chair was wet as were her underwear and pants and she changed her mother following the assessment. Claimant stated that when she realizes she has to urinate and rises from her chair, the urine is already coming out. By the time she gets to the bathroom urine is running down her leg. The evaluation request completed by Dr. _____ on December 1, 2005 (D2) indicates urinary incontinence as a pertinent medical condition.
- 6) The Pre-Admission Screening form (D2 section 27) indicates that claimant is capable of administering her own medication. Nurse's comments on page 4 of 4 of the PAS (D2) indicates that claimant's daughter fills claimant's pillbox and claimant takes the pills from the box and places them into her own mouth. Also indicates claimant administers her own insulin injections. Testimony received during the hearing from _____, RN from Panhandle Support Services, indicates that claimant cannot effectively administer her own medications due to numbness in her hands. Both Ms. _____ and claimant's daughter confirm that when claimant attempts taking her own medication that some of the pills spill and are then placed into claimant's hand or mouth to assure she takes all of the medications.
- 7) 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.

8) 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.

9) 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 December 28, 2005. The WVMi nurse assigned the claimant four (4) qualifying deficits in the areas of eating, bathing, dressing and grooming utilizing Aged/Disabled Home and Community Based Services manual criteria effective November 1, 2005.
- 3) The issues raised at the hearing were in the areas of Continence and Medication Administration.
- 4) Evidence and testimony received during this hearing reveal that in the contested area of Continence that claimant does meet the level 3 requirement of total incontinence. Her physician's diagnosis combined with testimony received from claimant's daughter and claimant herself all point to the fact that claimant cannot control her bladder functions. Claimant may attempt to go to the bathroom to urinate but does not successfully do so.
- 5) Evidence and testimony received during this hearing confirm that claimant does successfully administer some of her medications to herself. Numbness in her hands causes her to drop medication at times and others must then place medication into her hand. Policy requires that claimant must have medications placed into her hand, mouth or eye **at all times** to receive a deficit.

IX: DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, the Hearings Officer finds that the evaluating nurse assessed the claimant with

four (4) deficits appropriately. In addition, testimony and evidence admitted during this hearing reveal that one additional deficit should be awarded for continence. This results in a total deficit award of 5 (five) deficits which meets program requirements. 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 Waiver Services Program. The Department is to assess and assign points in determining the level of care to include continence.

X: RIGHT OF APPEAL

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of August 2006.

Melissa Hastings
State Hearing Officer