



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 31, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 18, 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 1, 2005 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **uphold** 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
Page – Attorney General BMS Office

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

Paul _____,

Claimant,

v.

Action Number: 06-BOR-1232

**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 18, 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 18, 2006 on a timely appeal, filed March 21, 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

_____ - claimant's friend

_____ - Nurse Catholic Community Services Homemaker Services

_____ - Case Manager Catholic Community Services

Nan Brown – Attorney Legal Aid of WV

Department's Witnesses:

Kay Ikerd – Nurse Bureau of Senior Services by phone

_____ - Nurse WVMi by phone

Alva Page – Attorney Bureau of Medical Services

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.

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 1, 2005

D-3 Notice of potential denial dated December 8, 2005

D-4 Notice of termination dated December 27, 2005

Claimant's Exhibits:

C-1 Pre-Admission Screening, PAS, completed January 10, 2005

C-2 WV Medicaid Aged and Disabled Waiver Program Plan of Care Homemaker Worksheet for period July 27, 2005 through July 26, 2006

Documents Not Submitted

Medical Assessment dated May 11, 2006 from Dr. _____

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 54 year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on December 1, 2005.
- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant and her homemaker participating. The evaluating nurse determined that the claimant had only two (2) qualifying deficits. She assigned a deficit for Ms. _____ in the areas of bathing and continence.
- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was multiple sclerosis.
- 4) Claimant's attorney contends claimant should have been awarded deficits in dressing, grooming, transferring, walking and ability to vacate a building.
- 5) The Pre-Admission Screening form (D2 section 25c) indicates that claimant was assessed at a level 1 Self/Prompting for dressing based on her statement during the assessment that the majority of the time she dresses herself. During the hearing the claimant testified that she cannot lift her leg on her own. She must lift the leg using her hands and arms. As a result, when she needs to put on pants the homemaker must assist her in pulling the pants up while claimant is lifting the leg. Mr. _____ confirms that he assists claimant with pulling up her pants on weekends when she visits him. Ms. _____, RN from Catholic Community Services also confirms that one of the tasks she assigns to the claimant's homemaker is assisting the claimant with dressing.
- 6) The Pre-Admission Screening form (D2 section 25d) indicates that claimant was assessed at a level 1 Self/Prompting for grooming based on claimant's statements during the assessment that she washes and combs her own hair, does her own mouth care and nails. Mr. _____'s and claimant's testimony during the hearing confirm the accuracy of the assessment. Ms. _____'s decision that claimant required assistance in washing her hair was unfounded as she made this decision based on her assumption that claimant washed her hair while in the shower. Claimant does not wash her hair in the shower due to lack of water pressure and fear of falling. Both claimant and Mr. _____ confirm that claimant washes her hair at a sink with a chair sitting behind her in case she loses balance.
- 7) The Pre-Admission Screening form (D2 section h) indicates that claimant was assessed at a level 2 Supervised/Assistive Device for transferring based on claimant's demonstrated ability to rise from chair and walk to table and later to the door utilizing a walker/cane. Claimant's testimony reveals that at times the homemaker does assist her in getting up from couch or chair. Claimant has had several falls, the most recent taking place within the last four days. She lost her balance when rising from couch and fell backwards into a closet door. Mr. _____ also testified that he assists her in getting up from couch or chair. He will let her try to do it herself but will assist her when it is obvious she is having difficulty. Ms. _____'s testimony indicates that supervision in transferring was noted on her care plan for the claimant.
- 8) The Pre-Admission Screening form (D2 section i) indicates that claimant was assessed at a level 2 Supervised/Assistive Device for walking based on claimant's statement and

demonstrated ability to walk utilizing a cane. Testimony received from all parties during the hearing confirm that claimant utilizes a cane, walker or electric wheelchair to ambulate in the home. Claimant indicated in her testimony that her physician has urged her to use her wheelchair to prevent falls but that she wishes to remain independent and utilizes a cane or walker when she feels she has the strength to do so.

- 9) Testimony received from Ms. [REDACTED], RN from Catholic Community Services, indicates that she reviews the Pre-Admission Screening form completed by the WVMi nurse prior to completing her own assessment. Her testimony reveals that she agrees with the WVMi nurse's assessment in all areas except in the dressing and grooming areas.

- 10) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-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.

- 11) 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.

- 12) 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 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. At the time of the PAS the WVMI nurse assigned the claimant two (2) qualifying deficits in the areas of bathing and continence.
- 2) The issues raised at the hearing were in the areas of Grooming, Dressing, Transferring, Walking and Ability to Vacate a Building.
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on December 1, 2005.

- 4) Evidence and testimony admitted during this hearing confirm that the assessment of a level 1 Self/Prompting in the contested area of Grooming was appropriately assigned by the evaluating nurse.
- 5) Evidence and testimony admitted during this hearing reveal that in the contested area of Dressing that claimant does meet the level 2 definition requiring Physical Assistance and should be awarded a deficit.
- 6) Evidence and testimony admitted during this hearing reveal that in the contested area of Transferring that claimant needs a one person assist at times. Policy states that to receive a deficit in this area, the claimant must be assessed at a level 3 one person assist in the home but does not quantify it by indicating that this assistance must be given at all times. As a result, a deficit is awarded to the claimant in the contested area of transferring as it was clearly demonstrated during the hearing that at times claimant cannot transfer on her own and does require the assistance of others to rise from a couch or chair.
- 7) Evidence and testimony admitted during this hearing confirm that claimant does utilize a cane, walker and a wheelchair as assistive devices for ambulating in the home. The level 2 Supervised/Assistive Device assessment was appropriately assigned by the evaluating nurse.
- 8) Evidence and testimony admitted during this hearing confirm that claimant cannot receive a deficit in the contested area of Ability to Vacate a Building. Policy requires that to receive a deficit in this area an individual must be unable at all times at a Level 3 or higher in walking or orientation. Findings in #7 above indicate that a level 2 Supervised/Assistive Device was the properly assessed level for claimant in walking. Orientation was not raised as an issue during this hearing.

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 two (2) deficits appropriately. In addition, testimony and evidence admitted during this hearing reveal that two additional deficits should be awarded for dressing and transferring. This results in a total deficit award of four (4) deficits. Policy requires five (5) deficits to be eligible for services under the Aged/Disabled Waiver Program. The department's proposed action to terminate services through the Aged/Disabled Waiver Program is **upheld**.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of July 2006.

Melissa Hastings
State Hearing Officer