



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

June 27, 2006

Dear Mrs. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 6, 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 January 3, 2006 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

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

____,

Claimant,

v.

Action Number: 06-BOR-1253

**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 6, 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 6, 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 son
- _____ - Claimant's daughter-in-law
- _____ - Nurse Panhandle Service Agency
- _____ - Aide Panhandle Service Agency
- _____ - Case Manager Catholic Community Services

Department's Witnesses:

- Kay Ikerd -Bureau of Senior Services by phone
- _____ - WVMi nurse 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.

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 January 3, 2006
- D-3 Notice of potential denial dated January 9, 2006
- D-4 Notice of termination dated February 7, 2006

Claimant's Exhibits:

- C-1 Letter from _____ MD dated February 15, 2006
- C-2 Audiology report from _____ MD dated November 14, 2001
- C-3 Letter from _____ RN dated January 17, 2006

VII. FINDINGS OF FACT:

- 1) Mrs. _____ is an 81year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on January 3, 2006.

- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant and her son, ____ participating. The evaluating nurse determined that the claimant had only four (4) qualifying deficits. She assigned a deficit for Mrs. ____'s need for physical assistance in bathing, grooming, dressing and incontinence.
- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was senile dementia. The letter from her doctor [REDACTED] MD dated February 15, 2006 (C1) supports this diagnosis as well.
- 4) Mr. ____ contends that his mother should have been awarded deficits for her inability to vacate the building, orientation, decubitus, medication administration and walking.
- 5) The Pre-Admission Screening form (D2) indicates "No" in section 24 Decubitus Present. Both Mr. ____ and Ms. [REDACTED] confirmed that on the date of assessment a scabbed over ankle sore was observed on Mrs. _____. Mr. ____ testimony revealed that medication is applied to Mrs. [REDACTED] skin daily to prevent decubitus from occurring. Decubitus at stage 3 or 4 is required for a deficit to be awarded. (D1). Unrefuted testimony of Ms. [REDACTED] confirms that a stage 3 or 4 decubitus involves a deep, open sore.
- 6) The Pre-Admission Screening form (D2 section 25i) indicates that Mrs. ____ was assessed at a level 2 Supervised/Assisted Device for walking. Mrs. ____ and her son both confirm that she utilizes a walker to move about the home and does so without assistance. [REDACTED], case aide, confirms that Mrs. ____ cannot step down to negotiate steps. A level 3, Walking with one person assist, is required for a deficit to be awarded in the Walking category.(D1)
- 7) The Pre-Admission Screening form (D2 section 27) indicates that Mrs. ____ is capable of administering her own medications. Mr. ____ testimony verifies that he places his mother's medications into a cup/container and that she takes them herself. Mrs. ____ confirmed this through her testimony as well. ____ and ____ both confirmed that there are times that Mrs. ____ does not take all the medication in the container but when her mistake is pointed out to her, she will take the medication voluntarily or may have to be urged/coaxed to do so. There was no testimony given that medication has to be placed into her hand for her to be able to receive the medication. Section 570.1.b of the Aged/Disabled Waiver Program policy states:

An individual is not capable of administering his/her own medication if the prescription medication must be placed in the recipients, hand, mouth, tube or eye by some one other than the recipient at all times.

- 8) The Pre-Admission Screening form (D2 section 25g) indicates that Mrs. ____ was assessed at a Level 2 Intermittent Disoriented. Ms. [REDACTED] based this level of assessment on her evaluation of Mrs. ____ as alert and oriented to name and place during her visit. Also found that she could write her own name without difficulty during the visit and did give appropriate responses when asked a variety of questions.

Ms. [REDACTED] did acknowledge that there were communication difficulties with Mrs. ____ due to her hearing loss but when she spoke loudly to her that Mrs. ____ answered questions appropriately. Mr. ____ indicated during the assessment and through testimony at this hearing that his mother on occasion believes she is at her grandmother's house and not in her apartment. Also states that his mother does not know what the lifeline necklace is that he has her wear. During the hearing however when asked what the device around her neck was for she appropriately responded that "It was to be used in case she needed help". To receive a deficit in the Orientation category an individual must be assessed at a Level 3 or higher meaning totally disoriented or comatose (D2).

- 9) 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.

- 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 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 four (4) qualifying deficits in the areas of bathing, dressing , grooming and incontinence..
- 2) The issues raised at the hearing were in the area of Decubitus, Walking, Orientation, Medication Administration and Ability to vacate a building..
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on January 3, 2006 .
- 4) The functional levels assigned in the contested areas of Decubitus, Walking, Orientation, and Medication Administration were made according to Aged/Disabled Waiver Program Policy §570 through 570.1c.

- 5) The 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.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse assessed the claimant with four (4) deficits appropriately. The department's proposed action to terminate services through the Aged/Disable 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 27th Day of June 2006.

**Melissa Hastings
State Hearing Officer**