



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 29, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 17, 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 25, 2006 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

WVMI
CCS

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

_____ **Claimant,**

Action Number: 06-BOR-1365

**v.
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 August 17, 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 August 17, 2006 on a timely appeal filed April 14, 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
- Nurse Catholic Community Services
- Case Manager Catholic Community Services
- Homemaker Catholic Community Services

Department's Witnesses:

- Kay Ikerd – Nurse 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 25, 2006
- D-3 Notice of potential denial dated January 31, 2006
- D-4 Notice of termination dated March 2, 2006

Claimant's Exhibits:

None

Documents Not Submitted

Letter dated July 11, 2006 from [REDACTED], MD

VII. FINDINGS OF FACT:

- 1) _____ is an 81 year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on January 25, 2006.

- 2) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant and her homemaker present. The evaluating nurse determined that the claimant had only four (4) qualifying deficits. She assigned a deficit for Ms. _____ need for physical assistance in eating, bathing, grooming and dressing.
- 3) The primary diagnosis listed on the Pre-Admission Screening (D2) was severe chronic obstructive pulmonary disease, congestive heart failure, diabetes and psoriasis.
- 4) Claimant's representative contends that Ms. _____ should have been awarded deficits in transferring, walking and inability to vacate the building.
- 5) Claimant's homemaker provides services 5 days per week, 4 hours per day.
- 6) The Pre-Admission Screening form page 2 of 4 item 25h and i (D2) indicates claimant was assessed at a level 2 Supervised/Assistive Device in the areas of Transferring and Walking. The evaluating nurse made this assessment based on her observation of claimant transferring and walking utilizing a walker during the assessment. The evaluating nurse did note claimant's weakness, loss of balance and shakiness while performing these activities. The homemaker's testimony indicates that based on her observation of the claimant, she will at times assist Ms. _____ in getting up from couch or chair by taking her by the arm or waist as she gets up. She will also assist Ms. _____ at times in walking by holding her arm. The homemaker indicates that claimant's condition changes from day to day. There are days claimant can transfer and walk on her own but there are also days that she requires assistance.

- 7) 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.

- 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 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 eating, bathing, dressing and grooming.
- 2) The issues raised at the hearing were in the areas of transferring, walking and ability to vacate the building.
- 3) Evidence and testimony admitted during this hearing reveal that the Pre Admission Screening was appropriately completed on January 25, 2006.
- 4) Evidence and testimony admitted during this hearing reveal that in the contested area of Transferring and Walking that claimant needs a one person assist **at times** and should be awarded deficits and two points each in determining Level of Care. Policy states that to receive a deficit in these areas, 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. In the contested areas of transferring and walking it was clearly demonstrated during this hearing that **at times** claimant cannot transfer or walk on her own and does require the assistance of one other person to enable her to get out of chairs and to walk.
- 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 **at all times**. As noted in item 4 above, claimant was determined to need a one person assist **at times** in walking but not **at all times**. Orientation was not an issue raised during this hearing.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, the Hearing Officer finds that the evaluating nurse assessed the claimant with four (4) deficits in the areas of eating, bathing, grooming and dressing appropriately. In addition, testimony and evidence admitted during this hearing reveal that two (2) additional deficits should be awarded for transferring and walking. This results in a total deficit award of six (6) 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 Policy is **reversed**. A total of 4 points are to be awarded to determine Level of Care.

X. The RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of August 2006.

Melissa Hastings
State Hearing Officer