



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 5, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 4, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Aged and Disabled Waiver case.

In arriving at a decision, the State Hearings 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 Aged and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows: Applicants for the ADW Program must meet all of the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care. Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program. (WV Provider Manual Chapter 570 PROGRAM ELIGIBILITY FOR CLIENT).

The information submitted at your hearing revealed: You do not meet the medical eligibility criteria for continued Waiver Services.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to close the Aged and Disabled Waiver case.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Brian Holstein, LSW – BoSS
[REDACTED], RN – WVMI
MountainHeart Community Services

_____,
Claimant,

v.

Action Number: 06-BOR-1639

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

Respondent.

DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on September 5, 2006 for Ms. _____. 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 scheduled for August 4, 2006 on a timely appeal filed April 11, 2006.

It should be noted here that Ms. D_____ was receiving benefits at the time of the hearing. A pre-hearing conference was not held between the parties, and Ms. _____ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver Services 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
_____, RN – MountainHeart Community Services
_____, Daughter
_____, Daughter-in-Law/Homemaker – Integrated Resources
Brian Holstein, Licensed Social Worker – Bureau of Senior Services (BoSS)*
_____, RN – West Virginia Medical Institute (WVMI)*
* Participated by telephone conference

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided: Does Ms. _____ meet the continued medical eligibility criteria for the Aged and Disabled Waiver Services Program?

V. APPLICABLE POLICY:

WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Provider Manual Chapters 570 *PROGRAM ELIGIBILITY FOR CLIENT*; 570.1 *MEDICAL ELIGIBILITY*; 570.1.a *PURPOSE* and; 570.1.b *MEDICAL CRITERIA*
- D-2 PAS dated 02/22/06
- D-3 Termination/Denial Letter dated 04/06/06
- D-4 Letter dated 03/11/06 from Ms. _____ and Ms. _____
- D-5 Potential Denial Letter dated 03/07/06
- D-6 Request for Hearing received by Bureau for Medical Services on 04/11/06
- D-7 Miscellaneous Hearing Documents

Claimants' Exhibits:

- C-1 Letter from _____ D.O., dated 04/21/06
- C-2 Letter from _____, M.D., dated 04/11/06

VII. FINDINGS OF FACT:

1) This issue involves the denial of continued services under the Aged and Disabled Waiver Services Program. The re-evaluation assessment was completed on February 22, 2006, for Ms. _____. The primary diagnoses were listed as HTN; OA; GERD; Dropped Bladder; and Urinary Incontinence. Those present during the assessment were Ms. _____, Daughter; Ms. _____, Homemaker; _____, Daughter; and Ms. _____, RN of the West Virginia Medical Institute (Exhibit D-2).

Ms. [REDACTED] determined through her evaluation that Ms. [REDACTED] only had two of the five required deficits to continue Waiver Services. The deficits were in the areas of: Grooming and Dressing. It should be noted that the evaluation was based only on Ms. [REDACTED]'s functional levels on the day of the visit.

2) The West Virginia Medical Institute issued a Potential Denial Letter to Ms. [REDACTED] on March 7, 2006 (Exhibit D-5). According to the letter, Ms. [REDACTED] had deficiencies in 2 areas: Grooming and Dressing. Ms. [REDACTED] was given two weeks to provide any additional medical documentation for reconsideration.

3) Ms. [REDACTED] and Ms. [REDACTED] submitted a letter on behalf of Ms. [REDACTED] (Exhibit D-4). The letter addressed the issues of Vacating the building; Bathing; Urinary Incontinence; Orientation; Transferring; and Walking.

4) WVMI issued a Termination/Denial Letter on March 7, 2006 (Exhibit D-3).

5) Ms. [REDACTED] requested a fair hearing, and it was received by the Bureau for Medical Services on April 11, 2006 (Exhibit D-6).

6) At the hearing, Mr. Brian Holstein reviewed the ADW Policy (Exhibit D-1). A new policy went into effect November 1, 2005 that addressed how certain areas of the PAS would be evaluated.

7) At the hearing, Ms. [REDACTED], RN reviewed the PAS assessed on February 1, 2006 (Exhibit D-2). After reviewing the letter from Ms. [REDACTED] and Ms. [REDACTED], Ms. [REDACTED] gave Ms. [REDACTED] one deficit in Eating. Additional letters from [REDACTED], D.O. and [REDACTED], M.D., were reviewed and did not provide any additional deficits.

8) According to Mr. Holstein, the policy only allows a deficit for vacating the building if:

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.

9) In order to receive deficits in Walking and Transferring, an individual must require one or two person assistance within the home. To receive a deficit in Orientation, an individual must be totally disoriented. To receive a deficit in Bathing an individual must require physical assistance. Ms. [REDACTED] noted that Ms. [REDACTED] is able to shower and shampoo her own hair without assistance. Finally, to receive a deficit in Urinary Incontinence a person must be incontinent three or more times a day.

10) Testimony from the family established that Ms. [REDACTED] is urinary incontinent at all times. One deficit will be awarded in this area.

11) Aged/Disabled Home and Community Based Services Manual § 570 PROGRAM ELIGIBILITY FOR CLIENT:

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

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be deinstitutionalized from a NF in any county of the state, or in another state, as long as his permanent residence is in West Virginia.
- C. Be approved as medically eligible for NF Level of Care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the SSA if an active SSI recipient.
- E. Choose to participate in the ADW Program as an alternative to NF care.

Even if an individual is medically and financially eligible, a waiver allocation must be available for him/her to participate in the program.

12) Aged/Disabled Home and Community Based Services Manual § 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 ADW services receives an appropriate LOC that reflects current/actual medical condition and short and long-term service needs.
- C. The medical eligibility determination process is fair, equitable, and consistently applied throughout the State.

13) Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria:

An individual must have five deficits on the PAS 2005 to qualify medically for the ADW 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 persons 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 (g) suctioning, (h) tracheostomy, (i) ventilator, (k) parenteral fluids, (l) sterile dressings, or (m) irrigations. (Item 26 on the PAS 2005)
- E. 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 some one other than the recipient at all times.

VIII. CONCLUSIONS OF LAW:

1) The Aged/Disabled Home and Community Based Services Manual § 570.1.b. - Medical Criteria states in part, "An individual must have five deficits on the PAS to qualify medically for the ADW Program."

2) The policy for Bathing; Continence, Orientation; Transferring, Walking and Vacating a building states in part:

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, Alzheimer's, or related condition."

Continence must be a Level 3 or higher (must be total incontinent – defined as when the recipient has no control of bowel or bladder functions at any time). Ms. _____ receives a deficit in this area.

Orientation must be a Level 3 or higher (an individual must be totally disoriented).

Transferring must be a Level 3 or higher (one person or two persons assist in the home).

Walking must be a Level 3 or higher (one person assist in the home).

Bathing must be a Level 2 or higher (physical assistance or more).

3) Ms. _____ received an additional deficit in Eating at the hearing. An additional deficit was awarded for Urinary Incontinence based on the testimony of the family. Ms. _____ did not qualify for additional deficits in Bathing; Vacating the building; Transferring and Walking. Since Ms. _____ only has four of the five required deficits, she does not meet the continued eligibility for the Aged and Disabled Waiver program.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the PROPOSAL of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of September, 2006.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer