



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 31, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 28, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services received through the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver 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.

The Aged /Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to meet all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for a nursing facility level of care but have chosen the Waiver Program as a means to remain in their home. [Aged/Disabled (HCB) Services Manual 570-570.1b (11/1/03)].

The information which was submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kelly Ambrose, Esq., Assistant AG's Office
Nan Brown, Esq., Legal Aid of WV
WVMI
BoSS

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

_____,
Claimant,

v.

Action Number: 05-BOR-6139

**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 March 31, 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 originally scheduled for October 12, 2005 and was rescheduled for December 8, 2005 but convened on February 28, 2006 on a timely appeal filed July 6, 2005.

It should be noted here that the Claimant's benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Medicaid Title XIX Waiver (HCB) 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
Nan Brown, Esq., Legal Aid of WV, Counsel for the Claimant
_____, Claimant's Daughter
_____, Claimant's Daughter (observing)
_____, Homemaker, Hands & Heart
_____, Previous Homemaker
_____, CM, CCIL (observing)
Kelly Ambrose, Esq., Assistant AG's Office, Counsel for the Department (by phone)
_____, RN, WVM I (by phone)
Kay Ikerd, RN, BoSS (by phone)

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Claimant continues to be medically eligible for benefits and services provided through the Medicaid, Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 560 & 570.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual 560 & 570
- D-2 Medical Assessment, PAS-2000, completed on May 13, 2005
- D-3 Notice of Potential Denial from WVM I dated 5/18/05
- D-3a Correspondence from _____, D.O., dated 5/27/05 from _____
- D-4 Notice of Termination/Denial dated 6/22/05

VII. FINDINGS OF FACT:

- 1) On May 13, 2005, the Claimant was reevaluated (medically assessed) by West Virginia Medical Institute (WVM I) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program, and to confirm the appropriate Level of Care.
- 2) The medical assessment (exhibit D-2) completed by WVM I determined that the Claimant is no longer medically eligible to participate in the ADW Program.

- 3) On May 18, 2005, the Claimant was notified of WVMI's findings via a Notice of Potential Denial (exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations. Based on your PAS you have deficiencies in only 2 areas – Bathing and Continence.

Since your PAS did not indicate the required deficits, your request for benefits cannot be approved.

This notice goes on to advise the Claimant that she can provide additional information regarding her medical condition within the next 2-weeks for consideration before a final decision is made. It was noted by the Department that additional information was received from the Claimant's physician and reviewed for this eligibility determination. The additional information has been identified as exhibit D-3a.

- 4) The additional information (D-3a) failed to change the Department's position and a termination notice (exhibit D-4) was sent to the Claimant on June 22, 2005. This notice includes some of the following pertinent information:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the AD Waiver Program. A decision has been made to terminate / deny your homemaker and case management services.

Eligibility for the Aged/Disabled Waiver program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 2 areas – Bathing and Continence.

- 5) [REDACTED] RN, WVMI, reviewed her findings on the PAS. She indicated that her medical assessment resulted in the assignment of two (2) deficits – Bathing and Continence. Ms. [REDACTED] testified that she reviewed the additional medical information identified as exhibit D-3a but this information failed to establish any additional deficits.
- 6) The contested areas on the PAS (D-2) specific to eligibility are - Vacating the building in the event of an emergency, Dressing, Medication Administration, Eating and Grooming.
- 7) The Claimant testified that she has difficulty dressing independently, especially from the waste down, because her colostomy causes her pain. She stated that she needs assistance with her pantyhose and slacks daily and she has difficulty putting on tie-type tennis shoes. Testimony received on behalf of the Claimant at the hearing is consistent with the documentation found on page 4 of 4 of exhibit D-2 where it is recorded the Claimant indicated she needed assistance in these areas of dressing. The evidence confirms that the Claimant requires physical assistance with dressing and a deficit is therefore awarded (+1).

- 8) Documentation included in the PAS (D-2) reveals that the Claimant reported during her medical assessment that she could exit her building in the event of an emergency. The WVMi RN based her findings on observations of ambulation and the Claimant's direct response to the question of vacating. However, testimony provided by the Claimant's previous homemaker reveals that the Claimant lives on the 4th floor of a high-rise apartment complex, and when the elevators were not operating, she had to physically assist the Claimant down the four (4) levels of steps to exit the building. She stated that exiting the building took approximately 10 minutes and that she did not believe the Claimant could do it independently. The Claimant's current homemaker indicated that she is convinced there is no way the Claimant could vacate down the stairs without physical assistance. Based on this evidence, a deficit in Vacating is therefore awarded (+1).
- 9) Evidence submitted fails to establish a deficit in eating. While the Claimant wears "arm bands" for Carpal Tunnel, the Claimant typically eats soft foods due to digestive problems and difficulty chewing. She indicated that the most difficult thing she needs to cut is a waffle and she is able to do this on her own. Based on this evidence, a deficit cannot be awarded in eating.
- 10) The Claimant's ability to administer her own medications was questioned, however, the evidence reveals that the Claimant only requires prompting and supervision. The Claimant is able to self-manage her diabetes and insulin injections but seems to require reminders daily to take medications. Testimony received in support of a deficit in Medication Administration reveals that the PAS should be changed to reflect prompting and supervision in section 28, however, this level of assistance does not qualify as a deficit. A deficit cannot be awarded in the area of Medication Administration.
- 11) The Claimant indicated during the assessment that she was able to manage all areas of grooming which included washing her hair, mouth care, and clipping and filing her fingernails. It was also noted in the assessment that a physician routinely visits her apartment complex and clips her toenails. Testimony received at the hearing asserts that the Claimant was not capable of clipping or filing her fingernails and that she required assistance with shaving at the time of the assessment. While it was noted that the Claimant has recently been diagnosed with Carpal Tunnel, the Claimant did not present this diagnosis at the time of the assessment and the nurse documented that there was "no difficulty noted" with the Claimant's hands. Additionally, there was insufficient information provided at the hearing to explain why the Claimant was unable to clip or file her fingernails, or the difficulties related to shaving independently. Because specific details were not provided in the testimony received at the hearing, and the credibility of the information being provided could not be established, a deficit cannot be awarded in grooming.

- 12) 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:

C. Be approved as medically eligible for NF level of care.

- 13) 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.

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

An individual must have five deficits on the PAS to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS:

- A. # 24: Decubitus - Stage 3 or 4
- B. #25: In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) and b) are not considered deficits.
- C. #26: Functional abilities of individual in the home.

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 incontinent)

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 or two 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. #27: 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.
- E. #28: The individual is not (c) capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) A medical assessment was completed on the Claimant to determine continued medical eligibility for participation in the Aged/Disabled Waiver Program on May 13, 2005.
- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services.
- 3) The medical assessment completed by WVMH reveals that the Claimant demonstrates two (2) program qualifying deficits – Bathing and Continence.
- 4) Evidence submitted at the hearing identifies two (2) additional deficits – Vacating the building in the event of an emergency and the Claimant requires physical assistance with dressing.
- 5) Whereas the Claimant exhibits deficits in only four (4) of the specific categories of nursing services, continued medical eligibility for participation in the Aged & Disabled Waiver Services Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of March, 2006.

Thomas E. Arnett
State Hearing Officer