



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 28, 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' action to deny your application for benefits and services through the Medicaid, Aged/Disabled Title XIX (Home & Community-Based) Waiver Services 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 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 does not require 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 Department's proposal to deny your application for benefits and services through 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
WVMI
BoSS
CCIL

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

_____,

Claimant,

v.

Action Number: 05-BOR-6320

**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 28, 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 February 28, 2006 on a timely appeal filed August 1, 2005.

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
_____, CM, CCIL
_____, Home Health Aid, WV Choice
Kay Ikerd, RN, BoSS (by phone)
_____, RN, WVMi

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 Department is correct in denying the Claimant's application for participation in the Medicaid, Aged/Disabled Waiver (HCB) Program based on medical eligibility.

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, dated 6/6/05
- D-3 Notice of Potential Denial dated June 9, 2005
- D-4 Notice of Termination/Denial dated June 28, 2005

VII. FINDINGS OF FACT:

- 1) In response to the Claimant's application for participation in the Medicaid, Aged & Disabled Waiver Services Program (ADW Program), the West Virginia Medical Institute, hereinafter WVMi medically assessed the Claimant to determine eligibility and completed a PAS-2000 on June 6, 2005 (exhibit D-2).
- 2) On June 9, 2005, the Claimant was notified of Potential Denial (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: Vacate a Building and Bathing.

This notice advises the Claimant that additional medical information will be considered for eligibility if received within the next 2 weeks. It was noted by the Department that additional information was submitted for review from [REDACTED], D.O., however, this document was received outside of the 2-week window allowed and it failed to address functionality.

- 3) On June 28, 2005, a Notice of Termination / Denial (exhibit D-4) was sent to the Claimant. This notices states, in pertinent part:

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

Reason for Decision: 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. Vacate a Building and Bathing.

Because you have less than 5 deficits at the level required, your services are being terminated / denied.

- 4) [REDACTED] reviewed the findings on the PAS-2000 that she completed on June 6, 2005. Ms. [REDACTED] testified that her assessment reveals that the Claimant only demonstrates two (2) program qualifying deficits – Vacating a building in the event of an emergency and Bathing.
- 5) Testimony received at the hearing reveals that the Claimant has been hospitalized on at least one occasion since the June 2005 medical assessment was done, and while it is evident that the Claimant’s condition has deteriorated, there is no evidence to indicate the medical assessment completed on June 6, 2005 was inaccurate. Based on the evidence received at the hearing, no additional deficits can be awarded.
- 6) 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.

- 7) 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.
- 8) 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 (PAS-2000) was completed on the Claimant to determine eligibility for participation in the Aged/Disabled Waiver Program on June 6, 2005.

- 2) Medical eligibility for the Aged/Disabled Waiver program requires deficits in at least five (5) specific categories of nursing services. These deficits are derived from a combination of assessment elements on the PAS-2000.
- 3) The June 6, 2005 medical assessment completed by WVMi identified two (2) program qualifying deficits – Vacating a building and Bathing.
- 4) Evidence submitted at the hearing fails to identify any additional deficits.
- 5) Whereas the Claimant exhibits deficits in only two (2) of the specific categories of nursing services, the Claimant's 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 Department's action to deny your application for benefits and services through the Aged/Disabled Title XIX (HCB) Waiver Program.

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X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of March 2006.

**Thomas E. Arnett
State Hearing Officer**