



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 18, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 5, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Aged/Disabled (HCB) Title XIX 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.

Eligibility for the Aged/Disabled Waiver 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 a 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 Sections 570- 570.1b].

Information submitted at your hearing revealed that you meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CWVAS
Nisar Kalwar, Esq., BMS
Benita Whitman, Esq., Legal Aid of WV

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

_____,
Claimant,

v.

Action Number: 05-BOR-6355

**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 April 18, 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 April 5, 2006 on a timely appeal filed August 4, 2005. The hearing was originally scheduled for November 7, 2005, but was rescheduled at the Claimant's request. The hearing was then scheduled for February 2, 2006, but was rescheduled at the request of Legal Aid of West Virginia.

It should be noted that the Claimant's benefits have 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

Benita Whitman, Claimant's attorney, Legal Aid of WV

_____, Case Manager, CWVAS

_____, RN, Care, Inc.

_____, friend of Claimant

_____, Claimant's previous Homemaker, Care, Inc.

Libby Boggess, RN, BoSS (participating telephonically)

Nisar Kalwar, Attorney, Bureau for Medical Services (participating telephonically)

_____, RN, WVMi (participating telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 Agency is correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 570

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community-Based Services Manual Section 570

D-2 Pre-Admission Screening (PAS) 2000 assessment completed on July 6, 2005

D-3 Letter of Potential Denial dated July 11, 2005

D-4 Termination/denial letter dated July 26, 2005

Claimant's Exhibits:

C-1 Hearing decision dated January 18, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant's Aged & Disabled Waiver case, hereinafter ADW, was undergoing a reevaluation to determine continued medical eligibility.

- 2) West Virginia Medical Institute completed a medical assessment (D-1) on July 6, 2005 and determined that the Claimant is not medically eligible to participate in the ADW Program.
- 3) The Claimant was notified of the potential denial (D-3) on July 11, 2005 and advised that she had two weeks to submit additional medical information.
- 4) On July 26, 2005, a denial notice (D-4) was sent to the Claimant.
- 5) Ms. [REDACTED] reviewed the PAS 2000 (D-2) and testified that four (4) deficits were established for the Claimant in the following areas: physical assistance with bathing, physical assistance with dressing, physical assistance with grooming, and incontinence of bladder.
- 6) Witnesses for the Claimant, who had been alone at her residence on the date the PAS was completed, contended that additional deficits should be awarded in the following areas:

Medication administration- The Claimant testified that other individuals attach a duragesic patch to her back every three days for pain.

Nursing comments on the PAS confirm that the Claimant wears a duragesic patch for pain control and that her neighbor, [REDACTED], applies the patch to the Claimant's back three times per week. Ms. Boggess, however, testified that duragesic patches are used for chronic pain relief and can be applied to any part of the body. The patches must be rotated, but can be placed on any fatty or muscular area of the body at the patient's preference.

The Claimant testified that she has neck and back problems as a result of herniated discs and that she could become paralyzed if she should fall. She stated that her doctor has advised her to place the duragesic patches on her back since that area is the source of her pain. She testified that she is unable to place the patch on her own back and that the patch is moved to different locations on her back.

Transferring- Ms. _____ was assessed as requiring supervision or an assistive device to transfer, however, witnesses contended that she requires one-person assistance.

The Claimant testified that she has muscle spasms in her legs, has problems with her right knee, and wears a knee brace the majority of the time. She stated that she has fallen numerous times, particularly when she is alone at night. In addition, she testified that she has difficulty standing up as a result of high blood pressure and takes seizure medications daily as she experiences dizziness. In addition, she has breathing problems which hinder her mobility in the household. The Claimant testified that she gets up from her couch by rolling, holding onto an end table and pulling herself up using the sofa. The Claimant also testified that her homemaker helps her get up when she is at the residence. Ms. _____ testified that she drives about two times per month to get

groceries, but that she uses a walker and a friend normally assists her with getting in and out of the car.

Ms. [REDACTED], who was the Claimant's homemaker at the time the PAS was completed, testified that she helped the Claimant off of the couch and had observed the Claimant's bruises from falls. She stated that the Claimant normally stayed on the couch and that she would fall when the homemaker was not there.

PAS comments indicate that the Claimant gets off of the couch by rolling onto her left side, sliding off the sofa onto the floor, and holding onto the couch and coffee table to raise herself.

Eating- The Claimant, who stated that she has ligament damage in her hands, testified that Ms. Foster prepared pancakes for her and cut up the pancakes since she was unable to do so as a result of pain. Although the PAS indicates that the Claimant told Ms. [REDACTED] she was able to cut her own meat, the Claimant testified that she can only cut meat if it has been cooked to the point that it is falling apart. Ms. [REDACTED] testified that she had cut up pancakes for the Claimant, but normally prepared foods that did not require cutting. Under cross-examination, the Claimant testified that she smokes about one pack of cigarettes per day and is able to light the cigarettes.

Inability to vacate in the event of an emergency- The Claimant testified that she takes medication for anxiety and depression and experiences disorientation at times. She does not believe that she could vacate her residence in the event of an emergency due to her difficulties in getting off the couch where she sleeps.

Nursing comments on the PAS state that the Claimant told Ms. [REDACTED] she could vacate with help since steps have been built at her back door.

Incontinence of bowel- The Claimant testified that she becomes constipated and takes medication which causes diarrhea.

7) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-7)-
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. #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 B (g)suctioning , (h)tracheostomy, (i) ventilator , (k)parenteral fluids , (l)sterile dressings , or (m) irrigations.
- E. #28: The individual is not capable of administering his/her own medication.

VIII. CONCLUSIONS OF LAW:

- 1) As a result of testimony presented during the hearing, one (1) additional deficit is awarded to the Claimant in the area of inability to administer medication. The Claimant testified that she is unable to apply duragesic patches to her back and requires assistance from her neighbor and friends. While Ms. Boggess testified that the patches can be

placed on any fatty or muscular area of the body, the Claimant provided credible testimony that her physician advised her to place the duragesic patches on her back since that is the site of her pain.

- 2) One (1) additional deficit is awarded in the area of transferring, which is raised from a Level 2 (supervised/assistive device) to Level 3 (one-person assistance). Both the Claimant and her former homemaker testified that the homemaker assisted the Claimant in getting up from the sofa. The Claimant testified that she has fallen when she is alone at night and the former homemaker testified that she has observed bruises that the Claimant sustained from the falls. Testimony is credible that the Claimant requires assistance with transfers.
- 3) One (1) additional deficit is awarded in the area of physical assistance with eating. The Claimant told Ms. [REDACTED] that she does not require assistance in cutting meat, but explained during the hearing that she can only cut meat if it has been cooked until it is falling apart. The Claimant and her former homemaker both testified that the homemaker had cut up pancakes for the Claimant. While the Claimant is admittedly able to light her cigarettes, testimony is reasonable that problems with her hand ligaments would make it difficult for her to use the degree of force required for cutting.
- 4) One (1) additional deficit is awarded in the area of physical assistance with vacating. Given the Claimant's difficulties with transferring and intermittent disorientation, the Hearing Officer is unconvinced that she would be able to vacate independently in the event of an emergency.
- 5) No additional deficit is awarded for incontinence of bowel as the frequency of the incontinence was not addressed and the Claimant had already received one deficit for incontinence of bladder. In determining medical eligibility, policy prohibits the awarding of another deficit for incontinence of bowel.
- 6) The addition of four (4) deficits brings the Claimant's total number of deficits to eight (8). The Claimant is medically eligible for the Aged/Disabled Waiver Program since five (5) deficits are required for program qualification.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's 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 18th Day of April, 2006.

Pamela L. Hinzman
State Hearing Officer