



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 31, 2006

Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 28, 2005. 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
CCIL
Alva Page III, Esq., BMS
Barry Koerber, Esq., West Virginia Advocates

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

_____,
Claimant,

v.

Action Number: 05-BOR-6700

**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 January 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 convened on December 28, 2005 on a timely appeal filed September 28, 2005. The hearing was originally scheduled for December 2, 2005 but was rescheduled at the Department's request.

The hearing record remained open until January 25, 2006 to allow for the submission of closing arguments.

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
_____, Claimant's Power of Attorney and Homemaker, West Virginia Choice
_____, Case Manager, CCIL
Barry Koerber, Claimant's Attorney, West Virginia Advocates
Martha Barber, Co-Counsel, West Virginia Advocates
_____, RN, WVMi
Kay Ikerd, RN, BoSS (participating telephonically)
Alva Page III, Attorney, Bureau for Medical Services (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 Pre-Admission Screening (PAS) 2000 assessment completed on July 21, 2005
- D-2 Letter of Potential Denial dated August 22, 2005
- D-3 Letter from _____ on behalf of _____ dated August 28, 2005
- D-4 Termination/denial letter dated September 20, 2005
- D-5 Termination/denial letter
- D-6 Hearing request
- D-7 Aged/Disabled Home and Community-Based Services Manual Section 570
- D-8 West Virginia Medical Institute Evaluation Request

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 21, 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-2) on August 22, 2005 and advised that he had two weeks to submit additional medical information. In response, the Claimant wrote and submitted a letter (D-3) providing additional information concerning his medical condition. The documentation did not change deficit information on the PAS-2000.
- 4) On September 20, 2005, a denial notice (D-4) was sent to the Claimant.
- 5) Ms. [REDACTED] reviewed the PAS 2000 (D-1) and testified that two (2) deficits were established for the Claimant, including physical assistance with bathing and dressing.
- 6) Witnesses for the Claimant contended that additional deficits should be awarded in the following areas:

Physical assistance with eating- Ms. _____ testified that she cuts the Claimant's meat because he is unable to cut it himself. He can, however, cut his eggs and potatoes.

Ms. [REDACTED] testified that the Claimant reported needing no assistance with eating on the date the PAS was completed.

Physical assistance with grooming- Ms. _____ testified that the Claimant has a beard which is not groomed unless she grooms it. He does no shaving. In addition, the Claimant is unable to extend his arms behind his head to comb the back of his hair and must have his toenails cut by a podiatrist as a result of his diabetes and poor eyesight.

Ms. [REDACTED] testified that the Claimant reported that he shaves himself without difficulty and that she observed no limited range of motion on the date of the assessment. She stated that inability to comb the back of one's hair would not be considered a deficit in her opinion and that cutting toenails is not a daily grooming activity.

Inability to vacate the building in the event of an emergency- Ms. _____ testified that the Claimant would be unable to vacate the building in the event of an emergency since he would have to negotiate three flights of steps. She stated that the Claimant shuffles when he walks and that she physically assists the Claimant when he walks down the steps. In addition, she believes that the Claimant would become confused in the event of an emergency. In August 2003, the Claimant had a stroke which affects his motor skills.

Mr. [REDACTED] testified that he believes the Claimant would become confused in the event of an emergency and he is uncertain that the Claimant could find his way to the fire door or stairs. He also testified that the Claimant has an unsteady gait, shuffles when he walks and would likely fall while attempting to negotiate the stairs. He testified that the

Claimant would require physical assistance – beyond mere supervision- in negotiating the steps.

Ms. [REDACTED] testified that the Claimant told her that he is certain he could vacate the building in the event of an emergency. However, Mr. [REDACTED] had indicated during the assessment that he believes the Claimant would need assistance with emergency vacating so Ms. [REDACTED] recorded that the Claimant would require supervision in this area. She stated that the Claimant ambulated throughout the apartment during the assessment.

Incontinence of bladder- Ms. _____ testified that the Claimant is incontinent of bladder at least three times per week. She stated that she places newspapers by the toilet to absorb urine and she must change and wash the Claimant when the incontinence occurs. Ms. _____ did not recall being questioned about the Claimant's incontinence during the assessment, and she believes that the Claimant may have misunderstood this question and responded incorrectly.

Ms. [REDACTED] testified that the Claimant denied any incontinence on the date the PAS was completed and stated that Ms. _____ was present and did not provide information concerning the issue.

Medication administration- Ms. _____ testified that she lays out the Claimant's medication and reminds him to take it.

Ms. [REDACTED] testified that laying out the Claimant's medication and prompting him to take it does not reflect physical inability to administer.

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 physical assistance with eating. The Claimant's homemaker testified that she must cut up the Claimant's meats because he is unable to do so.
- 2) One (1) additional deficit is awarded in the area of physical assistance to vacate the building in the event of an emergency. Both Ms. _____ and Mr. [REDACTED] testified that the Claimant would likely become confused in the event of an emergency and would be

unable to negotiate three flights of steps from his apartment to exit the building. Ms. _____ testified that she physically assists the Claimant in negotiating the stairs on a routine basis. Testimony is credible that the Claimant would require hands-on assistance to vacate in the event of an emergency.

- 3) One (1) additional deficit is awarded in the area of incontinence of bladder. Ms. _____ testified that the Claimant has accidents at least three (3) times per week which require clean-up and changes of clothing.
- 4) One (1) additional deficit is awarded in the area of physical assistance with grooming. Testimony indicated that the Claimant cannot groom his beard and that he cannot comb the back of his hair due to limited range of motion.
- 5) No additional deficit is awarded for inability to administer medication. Ms. [REDACTED] had recorded that the Claimant requires prompting/supervision in this area and that conclusion is consistent with testimony offered during the hearing.
- 6) The addition of four (4) deficits brings the Claimant's total number of deficits to six (6). 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 31st Day of January, 2006.

**Pamela L. Hinzman
State Hearing Officer**