



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 6, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 7, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under 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 revealed 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
WVMI
BoSS
Kelly Ambrose, Esq., Assistant AG's Office
_____, Esq., Legal Aid of WV

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

_____,
Claimant,

v.

Action Number: 05-BOR-6833

**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 6, 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 March 7, 2006 on a timely appeal filed October 21, 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
_____, Esq., Legal Aid of WV
_____, CM, CCS
_____, RN, _____ Health Care
_____, Homemaker, _____ Health Care
Kelly Ambrose, Esq., Assistant AG's Office, BMS (participated telephonically)
_____, RN, WVM (participated telephonically)
Libby Boggess, RN, BoSS (participated telephonically)

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 services under the 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, dated 8/2/05
- D-3a Correspondence from _____, CM, CCS, dated 8/22/05
- D-3b Correspondence from _____ M.D., dated 8/19/05
- D-3c Correspondence from _____, M.D., dated 8/18/05
- D-3d Correspondence from _____ D.O. dated 8/18/05
- D-3e Correspondence from _____, RN, Case Manager, _____ Medical Center, dated 8/23/05
- D-4 Notice of Potential Denial from WVM (dated 8/31/05)
- D-5 Notice of Termination / Denial dated 10/12/05
- D-6 Physician's Referral to WVM dated 7/7/05

VII. FINDINGS OF FACT:

- 1) On August 2, 2005, the Claimant was reevaluated (medically assessed) by West Virginia Medical Institute (WVM) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program.

- 2) The medical assessment (exhibit D-2) completed by WVMJ determined that the Claimant is no longer medically eligible to participate in the ADW Program and on August 31, 2005, the Claimant was notified via a Notice of Potential Denial (D-4). 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 4 areas – Vacating a Building, Grooming, Continence and Administering Medications.

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

The Claimant was notified that he had two weeks to provide additional medical information before a final decision was made. The additional documents received and reviewed for this eligibility determination have been identified as D-3a through D-3e.

- 3) On October 12, 2005 a Termination / Denial Notice (exhibit D-5) was sent to the Claimant. 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 4 areas – Vacate a Building, Grooming, Continence and Administering Medications.

- 4) [REDACTED] testified that based on her medical assessment completed on August 2, 2005 (exhibit D-2), the Claimant demonstrates program qualifying deficits Vacating a building, grooming, bladder incontinence and medication administration. Ms. [REDACTED] testified that she reviewed these findings with the Claimant at the conclusion of the assessment and the Claimant agreed with these findings.
- 5) The contested areas of the PAS, specific to medical eligibility, are in the areas of eating, bathing, dressing and walking.

- 6) The Claimant's ability to eat independently was contested due to concerns about the Claimant's visual impairment rendering him unable to cut his own food. The evidence reveals that the Claimant receives Meals-On-Wheels and that he separates the containers and organizes them in his refrigerator. He is then capable of retrieving the meals, cutting his own food and feeding himself independently. The Claimant testified that he sometimes has to touch his food to determine where to cut and must sometimes separate food with his hands but indicated that he can cut his food. While there was testimony to indicate that the homemaker may occasionally cut the Claimant's food, this appears to be an act of kindness as opposed to an act of necessity. There is insufficient evidence to demonstrate that the Claimant requires physical assistance with eating. A deficit cannot be awarded in the area of eating.
- 7) The evidence reveals that the Claimant takes a shower in the morning before the homemaker arrives and that his homemaker washes his back before she leaves because it is difficult for him (the Claimant) to reach. Documentation in the PAS indicates that the Claimant lifted his arms above his head and demonstrated that he could wash his own back with a long handled brush. The Claimant testified that he has a torn rotator cuff in both shoulders, and this condition, which he reported he has had for the past 15-20 years, makes it difficult to wash his back. A review of the evidence reveals that this condition was not reported by the Claimant or his homemaker on the date of the assessment, it was not provided on the physician's referral and it was not cited on any of the supplemental documentation submitted following the potential denial. Based on the evidence, the reason for needing assistance with bathing is both unsubstantiated and unconvincing. A deficit cannot be awarded in the area of bathing.
- 8) The documentation found on the PAS indicates that the Claimant is always dressed when the homemaker arrives in the morning and this was confirmed by the homemaker who testified that the Claimant is very organized and can dress independently. The evidence demonstrates that the Claimant can dress independently and does not require physical assistance. A deficit in dressing cannot be established.
- 9) The Claimant does not present any difficulties with his lower extremities and can ambulate inside his home by feeling his furniture and walls to assist him. The Claimant does have a cane but it is used outside of the home only. The Claimant does not require a 1-person assist to ambulate in his home and therefore does not qualify for a deficit in walking.
- 10) 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.

11) 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.

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

An individual must have five (5) 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 August 2, 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 WVMi reveals that the Claimant demonstrated four (4) program qualifying deficits – Vacating a building, Grooming, Continence and Administering Medications.
- 4) The evidence submitted on behalf of the Claimant fails to establish any additional deficits.
- 5) Whereas the Claimant exhibits 4-deficits in the specific categories of nursing services, continued medical eligibility for 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 Agency 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 6th Day of April 2006.

**Thomas E. Arnett
State Hearing Officer**