



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 12, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 29, 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 Section 570]

The information which was submitted at your hearing revealed that your medical condition continues to 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 **reverse** the proposal of the Agency to terminate your benefits under the Aged/Disabled Waiver Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
CCS

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

_____,
Claimant,

v.

Action Number: 05-BOR-7100

**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 May 12, 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 29, 2006 on a timely appeal filed December 9, 2005.

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:

[REDACTED], Claimant
[REDACTED], Homemaker, Helping Hands
[REDACTED], CM, CCS
[REDACTED], RN, Helping Hands
Brian Holstine, LSW, BoSS (participated by phone)
[REDACTED], RN, WVMI (participated 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(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-2005) assessment completed on November 2, 2005
- D-3 Notice of Potential Denial dated November 9, 2005
- D-4 Notice of Denial dated November 29, 2005

Claimant's Exhibits:

- C-1 Claimant's Plan of Care / Homemaker Worksheet for November 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-2) on November 2, 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 November 9, 2005 and advised that she had two weeks to submit additional medical information before a final decision would be made.
- 4) On November 29, 2006, the Claimant was notified via a Termination / Denial Notice (D-4) that eligibility for participation in the ADW Program could not be established.
- 5) [REDACTED], RN, WVMi reviewed the PAS-2005 (D-2) that she completed November 2, 2005 and testified that the Claimant demonstrated only one (1) functional deficit - Bathing. In order to qualify medically for the ADW Program, the individual must demonstrate five (5) program qualifying deficits.
- 6) The Claimant and her representatives contend that deficits should have been awarded in the following areas: Eating, Dressing, Grooming, Walking, Medication Administration and Incontinence.
- 7) The Claimant reported during her medical assessment that her homemaker cuts up her food because her hands are numb and that she cut her finger while trying to cut meat recently. The documentation found in the PAS, in conjunction with testimony received at the hearing, confirms that the Claimant needs assistance with cutting her food. A deficit is therefore awarded in **Eating** (+1).
- 8) Documentation found on the PAS reveals that the Claimant reported during the assessment that she needs physical assistance with dressing because she is unable to put on her shoes and socks. While the WVMi RN documented that the Claimant could reach her feet and therefore put on shoes and socks, this conclusion is inconsistent with evidence received at the hearing. The testimony received from the homemaker is consistent with information provided by the Claimant and it is confirmed by documentation found in the Claimant's Plan of Care (C-2). The Claimant has difficulty reaching her feet and therefore requires assistance with her shoes and socks. Based on this finding, the Claimant requires physical assistance with **Dressing** (+1).
- 9) The evidence reveals that the Claimant uses a 4-prong cane to ambulate in her home and a manual wheelchair outside of her home. There is insufficient evidence to demonstrate that the Claimant requires physical assistance with walking. The Department has correctly identified the Claimant's functional ability in walking as a level II – Supervised / Assistive Device and a deficit in **Walking** cannot be established.
- 10) The homemaker testified that she washes and combs the Claimant's hair, and while testimony received in this area was somewhat limited, documentation included on the PAS reveals that the Claimant must be careful about getting soap in her eyes due to an allergy. In addition, the Claimant reported during the medical assessment that she has difficulty raising her arms above her head. While this evidence alone is compelling, the fact that the Claimant must have a physician cut her toenails indicates that she does not have the expertise to complete this task and because she cannot reach her feet she does not have the ability. Based on this evidence, a deficit in **Grooming** (+1) is therefore established.

- 11) [REDACTED] testified that she instructed the homemaker to not assist the Claimant with transferring during the assessment so that she could see how the Claimant transfers when she is home alone. The Claimant was able to transfer during the assessment, and according findings on the PAS, the Claimant is able to routinely transfer without physical assistance from her furniture, commode and bed. Although the Claimant's homemaker testified that she sometimes physically assists the Claimant with transferring, the evidence fails to demonstrate that the Claimant requires physical assistance. A deficit in **transferring** cannot be awarded.
- 12) Policy provides that an individual can only qualify for a deficit in incontinence if they suffer from total incontinence – defined as when the recipient has no control of bowel or bladder functions at any time. The evidence reveals that the Claimant wears Depends and uses protective coverings on furniture to prevent accidents, however, she is aware when she needs to void her bladder and she routinely uses the toilet / bedside commode. Additionally, the Claimant's homemaker indicated that the Claimant can hold it (her urine) for a very short period and then she must go. While it's clear that the Claimant has episodes of bladder **incontinence**, the evidence fails to demonstrate that she meets the criteria necessary to qualify for a deficit in this area.
- 13) In order for an individual to be awarded a deficit in Medication Administration, the Claimant must require that medications be placed in her hand, mouth, tube or eye by some one other than the recipient at all times. Testimony received in support of a deficit in Medication Administration reveals that the homemaker fills the Claimant's pill box on her own time and that the Claimant has been administering her own medications. However, the homemaker testified that she has routinely been finding medications dropped on the floor and the Claimant is unable to pick them up once she drops them. Based on this testimony, it is clear that someone should be placing the Claimant's medications in her hand. In accordance with existing policy, the Claimant cannot successfully administer her own medications. A deficit is awarded in **Medication Administration** (+1).
- 14) Aged/Disabled Home and Community-Based Services Manual Section 570 - 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.
- 15) 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.
- 16) 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. Decubitus - Stage 3 or 4 (Item 24 on PAS 2005)
- B. Unable to vacate a building- a person is physically unable at all times at Level 3 or higher in walking or mentally incapable of leaving the building at Level 3 or higher in orientation with a diagnosis of dementia, Alzheimers, or related condition. (Item 25, I and 33, on the PAS 2005).
- C. Functional abilities of individual in the home. (Item 25 on the PAS 2005).
 - 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 total incontinent- defined as when the recipient has no control of bowel or bladder functions at any time)
 - 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 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. 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. (Item 26 on the PAS 2005)
- E. The individual is not capable of administering his/her own medications is defined as an individual not capable of administering his/her own medications if the prescription medication must be placed in the recipient's hand, mouth, tube or eye by someone other than the recipient at all times.

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 November 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 WVMH reveals that the Claimant demonstrated one (1) program qualifying deficit – Bathing.
- 4) The evidence submitted on behalf of the Claimant establishes four (4) additional deficits – Eating, Dressing, Grooming and Medication Administration.
- 5) Whereas the Claimant exhibits five (5) deficits in the specific categories of nursing services, continued medical eligibility for the Aged & Disabled Waiver Services Program is therefore established.

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 12th day of May, 2006.

**Thomas E. Arnett
State Hearing Officer**