



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

July 18, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 13, 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 reveals 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 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
CCIL

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

BOARD OF REVIEW

_____,

Claimant,

v.

Action Number: 05-BOR-7129

**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 July 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 June 13, 2006 on a timely appeal filed December 16, 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:

_____, _____, Claimant

_____, Claimant's daughter

_____, Homemaker RN, Family Services

_____, Homemaker, Family Services

_____, CM, CCIL

Kay Ikerd, RN, BoSS (participated telephonically)

_____, RN, WVMi (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(s) to be decided is whether the Agency is correct in its proposal to terminate benefits and 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 Sections 570 and 500
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on November 1, 2005
- D-3 Notice of Potential Denial dated November 9, 2005
- D-4 Notice of Denial dated November 29, 2005

VII. FINDINGS OF FACT:

- 1) On November 1, 2005, the Claimant was reevaluated (medically assessed) to verify continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program, and to confirm the appropriate Level of Care.
- 2) The medical assessment (exhibit D-2) completed by WVMi determined that the Claimant is no longer medically eligible to participate in the ADW Program.

- 3) On November 9, 2005, a notice of Potential Denial (exhibit D-3), was sent to the Claimant. 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 one (1) area – Grooming.

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

The Claimant was notified that additional information regarding her medical condition would be considered before a final decision is made if it is received within the next 2-weeks. The Department noted that no additional medical information was provided.

- 4) A Termination/Denial notice (exhibit D-4) was sent to the Claimant on November 29, 2005. 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 1 area – Grooming.

- 5) The Claimant and her representatives contend that she should have been awarded a deficit in bathing, dressing, transferring and vacating a building. They believe the PAS is incorrect because the Claimant is a proud individual who has difficulty admitting that she is unable to do things for herself.
- 6) The Claimant reported during the assessment that that her homemaker helps her bathe when she is there but that she can bathe independently when her homemaker is not. The Claimant transfers in and out of the tub by herself, however, testimony received on behalf of the Claimant reveals that she is unable to wash her feet, her back and under her left arm due to pain in her right shoulder. The Claimant requires physical assistance with bathing and a deficit is therefore awarded (+1).
- 7) Testimony and documentation received at the hearing reveals that the homemaker helps the Claimant put on her shoes and socks when she is present but that the Claimant can dress independently on the days her homemaker is not there. Although the Claimant has made some adjustments (sits on her commode to put on her shoes and socks) to help her get dressed when she is alone, and dressing is easier when her homemaker helps, the evidence fails to demonstrate that she requires physical assistance with dressing. A deficit cannot be awarded in dressing.

- 8) The Claimant suffers from Macular Degeneration and is reported to be legally blind. The Claimant's vision complicates medication administration because she cannot tell the difference in her pills. While the Claimant's condition clearly causes concern with medication administration, the Claimant's medications are organized in different locations and this enables her to remain independent in administering her own medications.
- 9) Testimony received at the hearing reveals that the Claimant's home is equipped with a lift chair and other devices that enable her to transfer independently. Because the Claimant can effectively utilize this equipment and transfer independently, the Claimant was correctly designated a level-2 (Supervised/Assistive Device) in transferring and a deficit cannot be awarded.
- 10) Policy provides that 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. Whereas the Claimant fails to meet the criteria necessary to establish a deficit in vacating, a deficit cannot be awarded.
- 11) 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.

- 12) 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.
- 13) 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 1, 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 demonstrates one (1) program qualifying deficit – Grooming.
- 4) The evidence submitted at the hearing establishes one (1) additional deficit - Bathing.

- 5) Whereas the Claimant exhibits deficits in only two (2) of the specific categories of nursing services, the Claimant's continued 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 Agency's proposal 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 18th day of July, 2006.

Thomas E. Arnett
State Hearing Officer