



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 21, 2006

Dear Ms. _____:

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 discontinue services under the Aged Disabled Waiver, A/DW, 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 A/DW 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 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 570- 570.1b (11/1/03).

The information which was submitted at your hearing revealed that at the time of the November 29, 2005 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged/Disabled Waiver Program.

It is the decision of the State Hearings Officer to **reverse** the proposed action of the Department to discontinue services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED], PHSS - Boggess, BoSS - [REDACTED], WVMH

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

_____,

Claimant,

v.

Action Number: 05-BOR-7253

**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 March 7, 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 January 6, 2006.

It should be noted here that the claimant's benefits have been 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's Witnesses:

_____, claimant

_____, claimant's homemaker

_____, claimant's daughter

_____ Case Manager Potomac Highlands Support Services

_____, _____ Commission on Aging

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services by phone

_____ WVMJ nurse

Presiding at the Hearing was Sharon K. Yoho, 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 Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service **Manual §570**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §570, 570.1 a,b.

D-2 Pre-Admission Screening, PAS, completed November 29, 2005

D-3 Eligibility Determination dated November 29, 2005

D-4 Notice of potential denial dated December 9, 2005

D-5 Notice of termination dated December 29, 2005

Claimant's Exhibits:

C-1 Letter from Dr. _____ dated January 9, 2006

VII. FINDINGS OF FACT:

- 1) Mr. _____ is a 66-year-old male. He is an active participant in the A/DW program. His A/DW eligibility was undergoing an annual evaluation on November 29, 2005.
- 2) The claimant has primary diagnosis of Hyper Tension, Hyperlipidemia, Hypothyroidism and Chronic Liver Dysfunction. He is under a physicians care for a Spinal Cord Injury. He experiences severe muscle spasms in his lower extremities

daily. Mr. _____'s right hand and arm are partially paralyzed. He complains of his right hand being numb and tingling. He lacks grip in his right hand and is unable to lift with his right arm.

- 3) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with only the claimant present. The evaluating nurse determined that the claimant had only four (4) qualifying deficits. She assigned a deficit for Mr. _____'s need for physical assistance needed in bathing, grooming, dressing and eating.
- 4) Issues addressed by the claimant's witnesses were in the areas of ambulating and transferring.
- 5) The claimant demonstrated to the evaluating nurse that he could rise from an armchair and advised that he was able to get in and out of bed on his own. The nurse observed the claimant ambulate using walker and cane, but made note on the PAS that his gait was unsteady.
- 6) Ms. [REDACTED] who is with the claimant four (4) hours per day, testified that he has at least two (2) episodes of spasms in legs and arms each day. She has come to his home and found him on the floor.
- 7) Ms. _____ states that when her father has these spasms he loses all strength in his legs.
- 8) Mr. _____ states that he has fallen while trying to go to the bathroom using his walker. He reports that he has fallen over the top of his walker a few times. He says that his lumbar gives out.
- 9) Dr. [REDACTED] who has been treating Mr. _____ for many years for a spinal cord injury provided a letter dated January 9, 2006 (Exhibit C-1). In this letter he advises that Mr. _____ requires assistance to rise from a chair and to ambulate household distances. He indicates that this assistance is required daily during times of severe muscle spasms in the lower extremities, which occur without warning. Dr. [REDACTED] also advises that Mr. _____ would require assistance to vacate in an emergency since there are unpredictable occasions when he may fall due to lumbar pain in his operated spine.
- 10) Aged/Disabled Home and Community-Based Services Manual Section 570 (D-1)-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.

- 11) 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.

12) 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) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMi nurse assigned the claimant only four (4) qualifying deficits in the areas of bathing, dressing, eating and grooming.
- 2) The issues raised at the hearing were in the areas of ambulating and transferring. The WVMi nurse observed Mr. _____ transfer and ambulate using assisted device during the assessment. The nurse did indicate in her notes that his gait was unsteady. Testimony and evidence support that the claimant does require hands on assistance to ambulate safely in his home. The daily episodes of spasms, his leg giving out due to lumbar pain, paralysis of his right hand and arm along with reports of falls all give credence to a decision to assign a level III for walking. Evidence to support a deficit in transferring was not convincing.
- 3) Policy stipulates that if assessed at a level III in walking the client is also given a deficit for his inability to vacate without assistance.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the evaluating nurse should have assessed the claimant with six (6) qualifying deficits at the PAS including walking and vacating. With the authority granted to me by the WV State Board of Review, I am ruling to **reverse** the Agency's proposed action to discontinue this claimant's services under the Aged/Disabled Title XIX (HCB) Waiver program. I further rule that Department assign deficits in walking and vacating along with associated points in determining level of care.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of March 2006.

**Sharon K. Yoho
State Hearing Officer**