



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

Yeager Walker
Secretary

April 17, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 5, 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 15, 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], CWAS - Boggess, BoSS - [REDACTED], WVMI

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

Claimant,

Action Number: 06-BOR-847

**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 5, 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 April 5, 2006 on a timely appeal, filed January 17, 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

_____, Case Manager, Central WV Aging Services
_____, Homemaker RN, Companion Care
_____, claimant's Homemaker

Department's Witnesses:

Brian Holstine, Bureau of Senior Services by phone

_____, WVMI nurse by phone

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 15, 2005
- D-3 Eligibility Determination dated November 15, 2005
- D-4 Notice of potential denial dated December 9, 2005
- D-5 Notice of termination dated January 9, 2006

Claimant's Exhibits:

- C-1 Letter from Physicians Assistant, Lori Stahara dated December 12, 2005

VII. FINDINGS OF FACT:

- 1) Ms. _____ is a 58-year-old female. She is an active participant in the A/DW program. Her A/DW eligibility was undergoing an annual evaluation on November 15, 2005.
- 2) The claimant has primary diagnosis of uncontrolled diabetes with neuropathy and arterosclerotic.

- 3) A WV Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home with the claimant, [REDACTED], and [REDACTED] present. The evaluating nurse determined that the claimant had only three (3) qualifying deficits. She assigned a deficit for Ms. _____'s need for physical assistance with bathing, grooming and dressing.
- 4) Issues addressed by the claimant's witnesses were in the areas of medicating, eating, vacating and incontinence.
- 5) Ms. _____ has an ongoing problem with her hands cramping. She reported this to the evaluating nurse during the assessment. She told her that she would have to have others cut up her food during to these cramping episodes. She also advised the nurse of choking problems. The evaluating nurse indicated in her notes that she observed the claimant open a pill bottle and grasp a pen to sign her name and grasp her cane. She further notes that due to the observation of this, she believed Ms. _____ could cut up her own food. Ms. _____ offered testimony that her hands cramp regularly and the cramping will last for one to two hours. During this time she is unable to get her pills from their containers. Ms. [REDACTED], homemaker, testified that she does have to cut up the claimant's meats. She also reported choking problems.
- 6) Ms. _____ sometimes does not make it to the toilet in time, but is not totally incontinent of bladder or bowels.
- 7) The claimant does have some difficulty ambulating. It is reported that she can not do steps without hands on assistance. Concerns were raised regarding five steps outside her door which she would have to go down to vacate away from the building.
- 8) 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.
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- 9) 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.

10) 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 three (3) qualifying deficits in the areas of bathing, dressing, and grooming.
- 2) The issues raised at the hearing were in the areas of medicating, eating, incontinence and vacating. The WVMi nurse was advised during the PAS that Ms. _____ had continuous problems with her hands cramping and that she needed others to cut up her food. The nurse was also advised of choking problems. The cramping of Ms. _____'s hands would prevent her from being able to use a knife and fork and also from getting her medication from a container and successfully to her mouth. Her hands obviously were not cramping during the short time when the evaluating nurse observed the claimant open a pill bottle and grasp a pen and cane. This does not discount the information provided to the nurse during the evaluation. It is clear that this claimant does require hands on assistance often for eating and medicating.
- 3) Testimony and evidence presented did not support that this claimant was totally incontinent or that she lacked the ability to walk on her own. Policy provides that she would need to be assigned a level III in walking in order to give a deficit in vacating.

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 five (5) qualifying deficits at the PAS including one for medication and one for eating. 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 the Department assign an additional deficit for eating and for medication administration 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 17th Day of April 2006.

**Sharon K. Yoho
State Hearing Officer**