



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 2, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 20, 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]

Information submitted at your hearing revealed that you do not meet medical eligibility requirements for the Aged/Disabled 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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

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

_____,
Claimant,

v.

Action Number: 06-BOR-904

**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 August 2, 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 July 20, 2006 on a timely appeal filed January 23, 2006. The hearing was originally scheduled for April 24, 2006, but was rescheduled at the Claimant's request.

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
_____, mother of Claimant
_____, Case Manager, CWVAS
_____, Homemaker RN, Upshur County Senior Center
_____, RN, WVM (participating telephonically)
Brian Holstein, Licensed Social Worker, BoSS (participating telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 500
- D-2 Pre-Admission Screening (PAS) 2005 assessment completed on December 14, 2005
- D-3 Notice of Potential Denial dated December 28, 2005
- D-4 Notice of Denial dated January 16, 2006

Claimant's Exhibits:

- C-1 Policy information and memorandums
- C-2 Letter from Dr. _____

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 December 14, 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 December 28, 2005 and advised that she had two weeks to submit additional medical information.

- 4) On January 16, 2006, a Notice of Denial (D-4) was sent to the Claimant.
- 5) Ms. [REDACTED] reviewed the PAS 2005 (D-2) and testified that two (2) deficits were established as a result of the assessment. Those deficits were in the areas of physical assistance with bathing and grooming.
- 6) The Claimant's witnesses contended that additional deficits should be awarded in the following areas:

Physical assistance with dressing- Ms. [REDACTED] testified that the Claimant, who undergoes kidney dialysis three times per week and has a shunt in her left arm, has been diagnosed with seizure disorder, schizophrenia, hyperlipidemia and depression. She testified that the Claimant needs assistance with dressing, pointing out that the Claimant had put her pants on backwards on the day of the hearing. She provided a letter (C-1) from Dr. [REDACTED] dated January 19, 2006 that indicates the Claimant "needs assistance with bathing, dressing and clothing."

Ms. [REDACTED] testified that, on the date of the assessment, both the Claimant and her homemaker agreed that the Claimant physically dresses herself. She stated that policy does not consider whether the clothes have been put on properly.

No additional deficit is awarded for physical assistance with dressing as the Claimant was rated as Level I (self/prompting) in this area. While testimony indicates that the Claimant could benefit from prompting to ensure that her clothing is put on correctly, no information was offered to suggest that the Claimant needs physical assistance to dress.

Inability to vacate the building in the event of an emergency- Ms. [REDACTED] testified that the Claimant's medical conditions cause her to become disoriented at times. She voiced concerns about the Claimant's ability to react properly and quickly enough to vacate the building should a fire occur.

Ms. [REDACTED] testified that the Claimant walked through her residence unassisted on the date of the assessment. She testified that the Claimant was alert and oriented. In order to receive a deficit for vacating, an individual must be rated as a Level 3 in walking (one-person assistance) or a Level 3 in orientation (totally disoriented or comatose).

While it is reasonable to believe that the Claimant becomes disorientated at times, she does not meet the severity criteria required to receive a deficit for inability to vacate. Therefore, no deficit is awarded in this area.

Orientation- Ms. [REDACTED] testified that the Claimant is periodically disoriented as a result of her medical conditions. Ms. [REDACTED] agreed, testifying that the Claimant has hallucinations, has impaired judgment, and becomes disoriented when she hears voices. Ms. [REDACTED] testified about the Claimant hearing voices as well.

Ms. [REDACTED] testified that the Claimant was alert and oriented on the date of the assessment.

No deficit can be awarded for Level II, intermittent disorientation, as the Claimant must be totally disoriented or comatose, Level III, to qualify for a deficit in this area.

Medication administration- Ms. [REDACTED] testified that the Claimant would be unable to put her medications into a pillbox and take them at proper times without assistance. The Claimant can put medications in her hand and mouth.

Ms. [REDACTED] testified that the Claimant and her homemaker had stated that the Claimant is able to take medication out of a pill planner (with reminders) if the pills have been pre-sorted for her.

No deficit is awarded for medication administration as policy dictates that medication must be placed in the Claimant's hand, mouth, tube or eye by another individual at all times in order for a deficit to be received.

Ms. [REDACTED] provided information (C-1) which she believes demonstrates that the new ADW policy was in draft status at the time of the Claimant's assessment. She contended that the Claimant should have been evaluated under the previous ADW criteria. Mr. Holstein responded that the new PAS criteria were in effect at the time of the assessment and the information to which Ms. [REDACTED] referred concerned other policy matters.

- 7) 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.

- 8) 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.

- 9) 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) Policy clearly specifies that an individual must be awarded five (5) deficits on the PAS 2005 in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The Claimant received two (2) deficits on the PAS completed by Ms. [REDACTED] in conjunction with her annual medical reevaluation.
- 3) As a result of testimony presented during the hearing, zero additional deficits are awarded. Therefore, the Department's proposal to terminate Waiver services is valid.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** 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 2nd day of August, 2006.

Pamela L. Hinzman
State Hearing Officer