



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

October 23, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 18, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through 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 503]

The information 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 Department's proposal to terminate your benefits and services provided through the Medicaid, Aged/Disabled Waiver Services Program.

Sincerely,

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

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

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

_____,

Claimant,

v.

Action Number: 07-BOR-1147

**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 October 23, 2007 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 originally scheduled to convene telephonically on July 17, 2007 but was reassigned and rescheduled to convene on October 18, 2007 upon the Claimant's request for an in-person hearing. The Claimant's timely appeal was filed on April 20, 2007.

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

_____, CM, CCS

Jenni Sutherland, LSW, 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 was correct in its decision to propose termination of the Claimant's benefits and services provided through the Aged & Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 503, 503.1, 503.1.1 and 503.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community-Based Services Manual Section 503

D-2 Pre-Admission Screening (PAS) assessment completed on February 26, 2007

D-3 Notice of Potential Denial dated March 12, 2007

D-4 Notice of Termination/Denial dated April 6, 2007

VII. FINDINGS OF FACT:

- 1) On February 26, 2007, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on 2/26/07}.

- 2) On or about March 12, 2007, the Claimant was notified of Potential Denial (Exhibit D-3). 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, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2.

Based on your PAS you have deficiencies in only 4 areas – Vacate a Building, Bathing, Grooming and Continence.

The Claimant was notified that she could provide additional information regarding her medical condition within the next 2 weeks for consideration before a final decision was made, however, if no additional information is received within 2 weeks from the date of the notice, she will receive a denial notice.

It should be noted that additional information was received timely and has been included in Exhibit D-2.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated April 6, 2007 (Exhibit D-4). This notice states, in pertinent part:

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 A/D Waiver Program. A decision has been made to terminate / deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: 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 4 areas – Vacate a Building, Bathing, Grooming and Continence.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) The Claimant and her representatives contend that the Claimant remains medically eligible to participate in the ADW Program as she should have been awarded a fifth (5th) deficit in the area of dressing. In support of the Claimant requiring physical assistance in this area, page 6 of 7 of Exhibit D-2, WVM RN notes regarding dressing states, in pertinent part – “She stated she sits down to get dressed but stated ‘sometimes’ needs help getting dressed for her ‘arm gets sore.’” “She stated that if her arm is not ‘not sore’ she can dress herself.” Notes found under grooming were cited by the Claimant’s representatives as well and state, in pertinent part – “She stated she cannot wash her own hair due to cannot raise right arm up high enough due to had fx (fracture) in past and has had difficulty raising right arm since that time.”

Included in Exhibit D-2 is an Rx note pad completed by [REDACTED] on March 15, 2007, which includes the following diagnosis – Degenerative arthritis of right shoulder with limited ROM (Range of Motion).

- 5) The WVMi RN purported that the Claimant told her during the assessment that she is incontinent daily and must change her own clothes daily (noted under DRESSING and BLADDER on page 6 of 7 in Exhibit D-2). According to the WVMi RN, a decreased range of motion in her shoulder does not necessarily mean that she is unable to slip her arm through a sleeve and modify the way she gets dressed.
- 6) The Claimant's daughter reported that the only time the Claimant changes her own clothes by herself is at night when no one else is there to help her. She stated that she helps the Claimant get dressed when she has an accident related to incontinence during the day.
- 7) Aged/Disabled Home and Community-Based Services Manual Section 503 (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 503.1.1 – 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 Waiver Policy Manual 503.2 (D-1): An individual must have five (5) deficits on the Pre Admission Screening (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.
 - #24 Decubitus - Stage 3 or 4
 - #25 In the event of an emergency, the individual is c) mentally unable or d) physically unable to vacate a building. a) Independently and b) With Supervision are not considered deficits.

- #26 Functional abilities of individual in the home
 Eating----- Level 2 or higher (physical assistance to get nourishment, not preparation)
 Bathing ----- Level 2 or higher (physical assistance or more)
 Dressing ---- Level 2 or higher (physical assistance or more)
 Grooming--- Level 2 or higher (physical assistance or more)
 Continence (bowel, bladder) -- Level 3 or higher; must be incontinent
 Orientation-- Level 3 or higher (totally disoriented, comatose)
 Transfer----- Level 3 or higher (one-person or two-person assistance in the home)
 Walking----- Level 3 or higher (one-person assistance 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)
- #27 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.
- #28 Individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded four (4) deficits on a PAS completed by WVMi in February 2007 – Vacating, Bathing, Grooming and Continence.
- 3) The Claimant and her representatives contend that because the Claimant “sometimes” needs assistance with dressing that a deficit should be awarded in this area. The evidence submitted to support the Claimant’s position includes a diagnosis from her physician consistent with a range of motion problem in the Claimant’s right shoulder and her daughter’s testimony indicating that she provides physical assistance in dressing when she is available during the day. However, the Claimant’s daughter also testified that her mother dresses independently at night when no one is available to assist her. Because there is insufficient information citing specific circumstances when the Claimant would typically need assistance (buttons, zippers, shirts, shoes, etc. . .) and the Claimant can dress independently at night, the evidence indicates that the Claimant is capable of dressing independently and is provided assistance in dressing as a matter of convenience rather than necessity. A deficit in dressing cannot be awarded.
- 4) Whereas the Claimant fails to demonstrate five (5) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program cannot be established.

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 through the Medicaid, 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 23rd Day of October, 2007.

Thomas E. Arnett
State Hearing Officer