



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 30, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 24, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for 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 does not 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 action of the Department in denying your application for benefits and services 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

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

_____,
Claimant,

v.

Action Number: 07-BOR-1180

**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 30, 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 convened telephonically on July 24, 2007 on a timely appeal filed April 25, 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 friend

_____, Claimant's friend

Kay Ikerd, RN, BoSS

_____, RN, WVMI

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

All parties participated telephonically.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Agency was correct in its decision to deny the Claimant's application for benefits and services under the Aged/Disabled Home and Community-Based Waiver 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 June 4, 2007

D-3 Notice of Potential Denial dated June 13, 2007

D-4 Notice of Denial dated June 29, 2007

VII. FINDINGS OF FACT:

- 1) On June 4, 2007, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program {see Exhibit D-2, Pre-Admission Screening (PAS) completed on June 4, 2007}.
- 2) On or about June 13, 2007, the Claimant was notified of Potential Denial (Exhibit D-4). 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 3 areas –Bathing, Grooming and Continence.

The Claimant was notified that he could provide additional information regarding his 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, he will receive a denial notice.

It should be noted that there was no additional medical information submitted by the Claimant within the allowed 2 week period.

- 3) The Claimant was notified that his application for ADW Program eligibility was denied in a termination/denial notice dated June 29, 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 3 areas –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 his representatives contend that the Claimant is medically eligible to participate in the ADW Program as he should have been awarded a deficit in the following areas: *vacating, walking, dressing and medication administration.*
- 5) As a matter of record, the Claimant's appeal was filed following a medical assessment completed by WVMi on February 12, 2007. Because a second medical evaluation was requested and completed in June 2007 (Exhibit D-2) while the Claimant's case was pending appeal, all parties agreed that documentation generated from the June 2007 assessment contained the most current medical information and would be used for the purpose of this appeal.
- 6) The evidence reveals that the Claimant is blind, however, he ambulates in his home by using his cane, the walls and furniture. The Claimant was correctly assessed at a level-2 (Supervised / Assistive Device) as he does not require physical assistance. **Based on this evidence, the Claimant does not qualify for a deficit in walking.**

- 7) The WVMi RN indicated in her assessment that the Claimant did not require physical assistance with vacating because he was able to ambulate in his home (walking and transferring) with supervision / assistive device (level-2). The Claimant indicated during the June 4, 2007 assessment that he would need physical assistance to vacate his home in the event of an emergency due to his inability to see.

Testimony received at the hearing reveals that the backdoor of the Claimant's mobile home is not operational and this would require him to navigate from his bedroom to the front entry if a fire occurred at night. Although not being able to use the back exit is clearly a safety concern that should be corrected, the Claimant's inability to determine the location of a fire and formulate a safe exit strategy creates a functional deficit in vacating. **A deficit in vacating is therefore awarded.**

- 8) The WVMi RN cited documentation on page 8 of 9 in Exhibit D-2 and stated that the Claimant reported he dressed himself on the day of the assessment and that he dresses himself daily. This information was then contradicted by the Claimant during the assessment when he stated that he must have help to put on his t-shirt due to painful shoulders. The Claimant provided a detailed account of how he puts on his t-shirt during the assessment, and while he has modified the way he places his arms in the sleeves due to shoulder discomfort, the Claimant is capable of dressing himself without physical assistance. **A deficit in dressing cannot be awarded.**

- 9) Exhibit D-2, page 9 of 9 states (Medication Administration) – "Per applicant his medication comes pre-filled from pharmacy for he cannot see to read labels to fill pill box himself. He stated he is able to take his medications himself." The WVMi RN purported that his medications are filled by the pharmacy in doses so that he just has to open the packet and take the medications. The Claimant's representative contends that the Claimant needs supervision with medication administration in the event he drops a pill. Exhibit D-2 reveals that the Claimant was assessed as requiring prompting and supervision with medications. This level of care (prompting and supervision), however, does not qualify as a functional deficit. **Based on the evidence, a deficit cannot be awarded in medication administration.**

- 10) 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.

- 11) 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.

- 12) 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 dictates 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 three (3) deficits were identified on a PAS completed by WVMI in June 2007 in conjunction with his Aged/Disabled Waiver Program application.
- 3) The evidence submitted at the hearing identifies one additional deficit – Vacating.
- 4) Whereas the Claimant demonstrates only four (4) deficits, 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 action of the Agency in denying the Claimant's application for 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 30th Day of July, 2007.

**Thomas E. Arnett
State Hearing Officer**