



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

September 26, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 26, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits 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 503]

Information submitted at your hearing reveals that you meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits and services 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
Select In-Home Services

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

Claimant,

v.

Action Number: 07-BOR-1488

**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 September 26, 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 on September 26, 2007 on a timely appeal filed May 30, 2007. The hearing was originally scheduled for August 29, 2007, but was rescheduled at the request of the Department.

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
_____, RN, Select In-Home Services
_____, Homemaker, Select In-Home Services
_____, Select In-Home Services
_____, Select In-Home Services (observing)
Brian Holstein, Licensed Social Worker, Bureau of Senior Services (telephonically)
_____, RN, West Virginia Medical Institute (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 benefits 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 March 29, 2007
- D-3 Notice of Potential Denial dated April 16, 2007 and additional information
- D-4 Notice of Denial dated May 11, 2007

Claimant's Exhibits:

- C-1 Letter from Dr. _____

VII. FINDINGS OF FACT:

- 1) The Claimant is receiving benefits under the Aged/Disabled Waiver Program and underwent an annual re-evaluation to verify her continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on March 29, 2007 and determined that the Claimant does not meet medical

eligibility criteria for the program. The nurse testified that the Claimant received four (4) deficits on the Pre-Admission Screening (PAS) assessment in the areas of physical assistance with bathing, dressing, grooming and eating.

- 3) The Claimant was sent a Notice of Potential Denial on April 16, 2007 (D-3) and was advised that she had two weeks to submit additional medical information for consideration. The Claimant submitted additional medical documentation from Dr. [REDACTED] (D-3), which was received by WVMI on April 27, 2007. However, no additional deficits were awarded as a result of this information.
- 4) West Virginia Medical Institute sent the Claimant a Notice of Denial (D-4) on May 11, 2007.
- 5) During the hearing, the Claimant and her witnesses contended a deficit should be awarded in the area of inability to vacate in the event of an emergency. The Select In-Home Services registered nurse testified that there are times when the Claimant cannot get out of bed due to pain. The PAS indicates that the Claimant has fibromyalgia, arthritis and chronic pain, in addition to other conditions. The Claimant indicated that her condition changes from day to day, and her homemaker testified that there are times when she must physically assist the Claimant in walking.

The Claimant presented a letter from Dr. [REDACTED] dated August 23, 2007 (C-1) which states:

Ms. _____ has had a multitude of orthopedic problems including bilateral knee osteoarthritis and most recently right shoulder subacromial bursitis and AC arthrosis. Due to her problems, she has difficulty getting around. She requires a cane at all times and it has resulted in her mobility being quite limited. When she has her worst flare, she is unable to get out of the house.

The Department objected to the admission of the letter into evidence due to its late submission.

The Claimant had submitted a letter to WVMI on April 27, 2007 (D-3) from Dr. [REDACTED] This letter states:

I am writing this letter on behalf of _____. She is a patient of mine with fibromyalgia, chronic pain, and osteoarthritis. She ambulates with a cane and has somewhat limited mobility. This may cause a delay in the patient being able to vacate a building in an emergent situation.

The WVMI nurse testified that the Claimant told her during the assessment she would need supervision if she had to vacate her home in the event of an emergency. Therefore, the Claimant was rated as needing prompting/supervision in this area, which is not a qualifying deficit in determining medical eligibility.

- 6) 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.

- 7) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 (D-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.

- 8) 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 Claimant received four (4) deficits in March 2007 in conjunction with her Aged/Disabled Waiver Program reevaluation.
- 3) As a result of testimony and evidence provided during the hearing, one (1) additional deficit is awarded in the area of inability to vacate, as it is reasonable to believe the client would require physical assistance in vacating should an emergency situation arise. Testimony indicated that the Claimant's ability to ambulate varies from day to day, and documentation from two physicians corroborated this information.
- 4) The required five (5) deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's medical eligibility 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 26^h Day of September, 2007.

**Pamela L. Hinzman
State Hearing Officer**