



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

June 12, 2007

Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 1, 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 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 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
[REDACTED]

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

Claimant,

v.

Action Number: 07-BOR-1553

**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 June 12, 2007 for [REDACTED]. 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 June 1, 2007 on a timely appeal filed April 10, 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:

[REDACTED] Claimant
[REDACTED], Case Manager, [REDACTED] ([REDACTED])
[REDACTED], Homemaker-RN, [REDACTED]
[REDACTED], Homemaker, [REDACTED]
Libby Boggess, RN, Bureau of Senior Services (participated telephonically)
[REDACTED], RN, West Virginia Medical Institute (participated 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 February 21, 2007
- D-3 Medical Necessity Evaluation Request
- D-4 Notice of Potential Denial dated March 12, 2007
- D-5 Letter from Dr. [REDACTED] dated March 19, 2007
- D-6 Notice of Denial dated April 6, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant is receiving benefits under the Aged/Disabled Waiver Program and underwent an annual re-evaluation to verify his continued medical eligibility.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on February 21, 2007 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified that the Claimant received two (2)

deficits on the Pre-Admission Screening (PAS) assessment in the areas of incontinence of bladder and inability to vacate the building in the event of an emergency.

- 3) The Claimant was sent a Notice of Potential Denial on March 12, 2007 (D-4) and was advised that he had two weeks to submit additional medical information for consideration by WVMI. The Claimant submitted additional medical information from Dr. [REDACTED], which was received by WVMI on March 20, 2007 (D-5). No additional deficits were awarded as a result of this information.
- 4) WVMI sent the Claimant a Notice of Denial (D-6) on April 6, 2007.
- 5) During the hearing, the Department conceded one (1) additional deficit in the area of physical assistance with dressing, bringing the Claimant's total number of deficits to three (3).
- 6) Representatives for the Claimant contended that additional deficits should be awarded in the following areas:

Medication administration- The Claimant's homemaker-RN testified that his private care workers set up medications for him and that he would be unable to take his medicine without prompting/supervision.

The PAS states that the Claimant is able to administer his own medications with prompting and supervision, and that assessment is consistent with information provided during the hearing. Therefore, no additional deficit is awarded in this area.

Decubitus- The Claimant's homemaker-RN testified that he has sores on his ankles which have caused ongoing problems. She pointed out that Dr. [REDACTED] letter (D-5) notes a "chronic sore" on the Claimant's foot. After the Claimant's PAS was completed, the homemaker-RN had completed a review of the Claimant's case and discovered infected areas on his ankles. The problems required hospitalization.

The BoSS nurse testified that the sores are related to the Claimant's diagnosis of atherosclerosis with claudication. She testified that the ulcers are the result of poor circulation and are not considered pressure or bed sores, therefore, they do not meet the criteria to receive a deficit for decubitus.

No additional deficit is awarded for decubitus as testimony indicates the ulcers in question are not considered pressure/bed sores.

Bathing- The homemaker-RN testified that the Claimant is proud and likes to be as independent as possible. She believes that he needs assistance with bathing, but does not allow the homemaker to assist him. The homemaker reminds the Claimant to bathe. Dr. [REDACTED] letter states that the Claimant is unable to "bathe himself adequately."

Notes on the PAS indicate that the Claimant "reports he takes a shower with shower chair, grab bars, hand held shower. Has to step over to get into shower. Member reports he uses the bars to get self in and out of shower, states he needs no help getting in or out of the shower. Member states he can wash his back with his back brush and/or

wash rag, member showed how he uses the wash rag to wash his back, states he holds onto grab bars and lifts one leg at a time and washes leg/foot and then does the other. States he can get self out of shower and dry self off.”

While physical assistance may be of benefit to the Claimant, there is no evidence or testimony to indicate that the Claimant receives any assistance with bathing and the PAS provides a detailed description of how the Claimant stated he bathes himself. Therefore, no deficit can be awarded in this area.

Grooming- The homemaker-RN testified that she believes the Claimant needs assistance with grooming activities. Dr. [REDACTED] letter states that the Claimant has “great difficulty dressing himself and providing grooming.” No specific areas of grooming were identified as problematic for the Claimant.

The PAS states, “Member states he washes his hair in the shower and can comb his hair on his own. States he trims his fingernails, dentures- reported he can brush and soak them, states he can trim own toenails, states he uses big trimmers, reports he does not cut self, uses electric razor on his own to shave. States he can put lotions on, member reports no lotions applied to his back.”

No information was provided to indicate that the Claimant receives assistance with any specific grooming activity. Therefore, no deficit can be awarded in this area.

Physical assistance with walking- The homemaker-RN testified that the Claimant has good days and bad days in regard to his condition and his mobility. She testified that the Claimant has had a knee replacement, has a history of falls and dizziness, uses a cane in the home, and requires one-person assistance at times. She stated that the Claimant may not have required physical assistance on the day of the assessment, but his condition can vary on any given day.

The PAS states that the Claimant “uses a cane at times to walk to bathroom do (sic) to unsteady on feet at times. States he has had a couple of falls, states it has been a while since he last fell, has stumbled a couple of times and HM (homemaker) has caught him, member reports if wakes up from sleeping in the recliner he is dizzy and has to wait until he gets situated. Uses cane and assistance when goes outside of home. When arrived member walked to kitchen on his own, member walked to the door to let his cat out, walked to his bathroom a couple of times without any difficulty.”

Based on the Claimant’s history of falls and dizziness, it is reasonable to believe that he requires physical assistance with walking at times. Therefore, one (1) additional deficit is awarded for one-person assistance in walking.

- 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 (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.
- 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 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 two (2) deficits in February 2007 in conjunction with his Aged/Disabled Waiver Program reevaluation. The Department conceded one (1) additional deficit to the Claimant during the hearing, bringing his total number of deficits to three (3).
- 3) As a result of information presented during the hearing, one (1) additional deficit was awarded by the Hearing Officer, bringing the Claimant's total number of deficits to four (4).
- 4) The required five (5) deficits have not 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 **uphold** 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 12th Day of June, 2007.

Pamela L. Hinzman
State Hearing Officer