

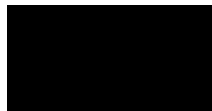


State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 5, 2007



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 30, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services under the Aged Disabled Waiver, ADW, 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 ADW 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 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 503- (11/1/03).

The information which was submitted at your hearing revealed that at the time of the May 3, 2007 Pre-Admission Screening Assessment, you did meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate services under the ADW Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

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

[REDACTED]
Kay Ikerd, BoSS

[REDACTED], WVMI

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

[REDACTED]

Claimant,

v.

Action Number: 07-BOR-1557

**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 30, 2007 for [REDACTED] on a timely appeal filed June 21, 2007. 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.

It should be noted here that the Claimant's benefits have been continued pending the hearing decision.

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 Witnesses:

██████████ Claimant's Sister and Homemaker, ██████████ (By telephone)

██████████ CM, ██████████ (By telephone)

Department's Witnesses:

Kay Ikerd, RN, Bureau of Senior Services (By telephone)

██████████, WVMI nurse, (By telephone)

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

This hearing was held telephonically.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department was correct in their decision to discontinue services under the Aged/Disabled Waiver (HCB) program because medical requirements could not be met.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §500

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Aged/Disabled Home and Community based Services Manual §503 - 503.4

D-2 Pre-Admission Screening, PAS, completed May 3, 2007

D-3 Notice of Potential Denial dated May 21, 2007

D-4 Notice of Denial dated June 15, 2007

It should be noted that a statement was received from ██████████ of ██████████ ██████████ 08/31/2007. This document was not entered into the record as it was received after the conclusion of the hearing.

VII. FINDINGS OF FACT:

- 1) This Claimant was 29 years old at the time of the assessment. He is a recipient of services under the ADW program. In order to determine his ongoing medical eligibility, an assessment was scheduled for May 3, 2007.

- 2) The Claimant has primary diagnosis of deep vein thrombosis and secondary diagnoses of anxiety, depression and morbid obesity. He resides with his mother and his father. He has homemaker services coming in 4-5 times per week 4-5 hours per day. Informal support is from mother and father. The Claimant's weight was listed as 460 pounds.
- 3) A WV Medical Institute (WVMI) Nurse completed the Pre-Admission Screening (PAS) assessment in the Claimant's home with only her and the Claimant present. The nurse determined from the answers given to her by the Claimant that he had three qualifying deficits. These were his needing physical assistance with eating, grooming and dressing.
- 4) A potential denial letter was sent to the Claimant dated 05/21/2007. (Exhibit D-3) Additional information was submitted and it was determined that the Claimant is physically unable to vacate the building in the event of an emergency. The Claimant had deficiencies in four (4) areas. Because the Claimant had less than five (5) deficits, a letter was sent dated 06/15/2007 informing him that services were being terminated. (Exhibit D-5)
- 5) The Claimant disagrees with the finding for bathing.
- 6) The Claimant told the evaluating nurse during the assessment that when it comes to bathing, he does take a shower. He does have to step into the tub to take his shower. He notes he is able to get in and out of tub by himself. He notes he is able to bath himself. He does have a shower chair he sits on to take his bath. He notes he is able to bath all over. He notes it does take him a while but he does get it done. (Exhibit D-2) The WVMI nurse noted in her testimony that the Claimant appeared to be fairly independent.
- 7) The testimony from the Claimant's sister, who was not present for the assessment, revealed that she has worked as his homemaker since 2006. The Claimant weighs approximately 439 pounds. She bathes his back, legs and feet. He gets short of breath.
- 8) Aged Disabled Home and Community-Based Services Manual Section 503, MEMBER ELIGIBILITY AND ENROLLMENT PROCESS

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.

- 9) Aged Disabled Home and Community-Based Services Manual Section 503.1: MEDICAL ELIGIBILITY

A QIO under contract to BMS determines medical eligibility for the ADW Program.

**10) 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 members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW 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.

**11) Aged Disabled Home and Community-Based Services Manual Section 503.2
MEDICAL CRITERIA:**

An individual must have five deficits on the Pre-Admission Screening Form (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 to vacate 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. (Item 25 on the PAS 2005).

- | | |
|----------------------------|---|
| a. Eating----- | Level 2 or higher (physical assistance to get nourishment, not preparation) |
| b. Bathing ---- | Level 2 or higher (physical assistance or more) |
| c. Grooming--- | Level 2 or higher (physical assistance or more) |
| d. Dressing ---- | Level 2 or higher (physical assistance or more) |
| e. Continence--
bowel | Level 3 or higher; must be incontinent |
| f. Continence--
bladder | Level 3 or higher; must be incontinent |
| g. Orientation-- | Level 3 or higher (totally disoriented, comatose) |
| h. Transfer----- | Level 3 or higher (one person or two person assist in the home) |
| i. Walking----- | Level 3 or higher (one person assist in the home) |
| j. 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 The individual is not capable of administering his/her own medications.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy provides that an individual must have five (5) qualifying deficits to be medically eligible for the Aged Disabled Waiver program. At the time of the PAS the WVMi nurse determined that the Claimant had four qualifying deficits. Those were that he would need physical assistance eating, dressing and grooming and that he was physically unable to vacate in the event of an emergency.
- 2) The issue raised at the hearing was in the area of bathing. The State Hearing Officer finds the homemaker's testimony credible that she assists the Claimant with bathing. A point will be added for bathing.
- 3) The Claimant has five qualifying deficits.
- 4) This Claimant is medically eligible for the ADW program and does need the level of care provided in a nursing facility.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, the Department is reversed in their determination that this Claimant is not medically eligible for the Aged Disabled Title XIX (HCB) Waiver program. In addition, the Department will include a deficit for physical assistance with bathing and assign the associated points when assessing the level of care criteria.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th Day of September, 2007.

**Margaret M. Mann
State Hearing Officer**