



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

October 15, 2007

Dear Ms. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 25, 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 29, 2007 Pre-Admission Screening Assessment, you did not meet the medical eligibility criteria for services under the Aged Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** 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**

█
Claimant,

v.

Action Number: 07-BOR-1753

**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 25, 2007 for █ on a timely appeal filed July 11, 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:

It should be noted that this hearing was held telephonically.

Claimant

Claimant's Witnesses:

[REDACTED], Case Manager,

, Homemaker,

Department's Witnesses:

Kay Ikerd, RN, Bureau of Senior Services

██████████, RN, West Virginia Medical Institute

Presiding at the hearing was Margaret M. Mann, 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 Department was correct in the proposal to terminate services under the Aged/Disabled Waiver (HCB) program as medical eligibility could not be established.

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 29, 2007 |
| D-3 | Additional Medical Information |
| D-4 | Notice of Potential Denial dated June 14, 2007 |
| D-5 | Notice of Termination dated July 5, 2007 |

VII. FINDINGS OF FACT:

- 1) This Claimant is a 79-year-old female. She is a recipient of services under the ADW Program.
- 2) The Claimant has primary diagnosis of COPD and arthritis in hips and knees. Other medical conditions noted were pulmonary HTN and HTN. She lives alone in a 6th floor apartment. At the time of the assessment, she was receiving 4 hours of homemaker

services M-F. She reported that she is “by myself on the weekends”. She denied any other formal support. Her daughter helps her as well.

- 3) A WV Medical Institute (WVMI) Nurse completed the Pre-Admission Screening (PAS) (Exhibit D-2) assessment in the Claimant’s home with her and the Claimant present on May 29, 2007. The nurse determined from the answers given to her by the Claimant that she had two qualifying deficits. These were in needing physical assistance with dressing and being physically unable to vacate in the event of an emergency. (Exhibit D-5)
- 4) Testimony from the WVMI nurse revealed that after she had completed the assessment she called the Claimant’s daughter and went over the PAS with her in order to determine if the answers given by the Claimant were accurate. Recording on the PAS notes the following: 07/03/07: received additional information for review. The information included an old referral, signed by the physician April 2006, pages 3&4 of the PAS completed 08/2006, page 4 of the PAS completed 05/2007, and a letter from CA, dated 06/25/07. The information includes Alzheimer’s being circled and the fact that member is on Aricept. The letter indicates that the member has a dx of Alzheimer’s and was questioning the reason the assessment was done without someone else being present. Please note that the referral that was submitted in May, and signed by the physician on 05/01/07 did not indicate a dx of Alzheimer’s. In addition, the member did not have any medications in her home and the WVMI nurse had to obtain the list from the daughter and also attempted to clarify with the MD office and did not receive a response. In light of this, I (WVMI nurse) will mark Alzheimer’s, because the daughter did provide the medication list which included Aricept, although the physician did not respond to request to verify the medications. Please note that all information was clarified with the member’s daughter after the issue of possible Alzheimer’s was realized. She did agree with the elements as marked. Nor further changes made to PAS.
- 5) The issues addressed by the Claimant and her witnesses were in the areas of bathing, grooming and bladder incontinence. Under bathing, it is agreed that the Claimant will not allow anyone in the bathroom with her when she is bathing. However, the homemaker does wash her feet in a pan at the couch. Under grooming, the Claimant goes to a podiatrist to have her toenails cut because the nails are so thick. Testimony from the case manager revealed that the Claimant has not expressed to her problems with incontinence but the homemaker has reported coming in and finding soiled underwear in the bathroom more than three times per week.
- 6) Testimony from the Claimant’s homemaker revealed that she helps the Claimant wash her hair, rolls it and brushes it out. The Claimant washes her hair in the shower but then she wets her hair when she rolls it. When she washes the Claimant’s feet, they put a pan of water in the living room. She washes the Claimant’s feet and dries them. She does find soiled underwear (urination) in the bathroom more than three times per week. Sometimes the soiled underwear is beside her bed.
- 7) The WVMI nurse made the following notation on the PAS. Bathing: Member has a tub/shower combination with handheld sprayer. She also has a shower chair. She reports she gets in/out of the tub independently. She reports she is able to wash all body

parts: face, chest, abdomen, private area, legs, feet, & back independently. She states she uses a brush to wash her back. She denies needing assistance with her bath.

Grooming: Member reports she washes her hair while she is in the shower. She states she does this independently. Member has upper & lower dentures. She states she brushes her top dentures and does not remove them at night. She states she soaks her lower dentures every night. Member states she goes to a podiatrist for her toenails. She states she cannot bend over to trim her toenails and her toenails are thick. She reports she trims her own fingernails. Member reports she is able to brush her hair.

Continence: Bowel/Bladder: Member denies any accidents with her bladder. She denies having to wear pads or Depends. She states "not yet". Member reports she does not have accidents with her bowels & is "pretty regular" with her BM's.

- 8) Testimony from the BoSS RN revealed that when one goes to a podiatrist to have nails cut, this becomes a skilled service and does not count as a deficit. The homemaker is not doing this for the Claimant.
- 9) Testimony from the WVMi nurse revealed that when she was in the home for the assessment, the Claimant was able to extend both arms and reach down from a sitting position and touch her toes. The Claimant denied incontinence during the visit. When she called the Claimant's daughter, the daughter reported her mother does have occasional accidents because her mother cannot make it to the bathroom quick enough but that this happens only about once a week. The Claimant reported to her that she washed her hair in the shower. Rolling and styling of hair is not considered a deficit.
- 10) 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.

- 11) 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.

- 12) 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.

13) 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 two (2) qualifying deficits. Those were that she would need physical assistance with dressing and would need physical assistance in order to vacate in the event of an emergency.
- 2) The issues raised at the hearing were in the areas of bathing, grooming and bladder incontinence. Testimony revealed that the homemaker does help the Claimant bathe her feet. A point will be awarded for physical assistance with bathing. There was no clear evidence or testimony presented at the hearing that would change the original determination under grooming and bladder incontinence.
- 3) As there are only three (3) qualifying deficits, this Claimant is not medically eligible for the ADW program and does not 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 upheld in their determination that this Claimant is not medically eligible for 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 15th Day of October, 2007.

Margaret M. Mann
State Hearing Officer