



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

April 25, 2007



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 24, 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
[REDACTED]

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

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Claimant,

v.

Action Number: 06-BOR-3366

**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 April 25, 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 April 24, 2007 on a timely appeal filed December 1, 2006. The hearing was originally scheduled for February 15, 2007, but was rescheduled at the request of the Claimant.

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], Homemaker RN, [REDACTED]
[REDACTED], Home Health Aide, [REDACTED]
Kay Ikerd, 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 was 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 October 3, 2006
- D-3 Notice of Potential Denial dated November 7, 2006
- D-4 Notice of Denial dated November 27, 2006

Claimant's Exhibits:

- C-1 Medical records

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 October 3, 2006 and determined that the Claimant does not meet medical

eligibility criteria for the program. The nurse testified that the Claimant received three (3) deficits on the Pre-Admission Screening (PAS) assessment in the areas of bathing, dressing and grooming.

- 3) The Claimant was sent a Notice of Potential Denial on November 7, 2006 (D-3) and was advised that he had two weeks to submit additional medical information for consideration by WVMi.
- 4) WVMi sent the Claimant a Notice of Denial (D-4) on November 27, 2006.
- 5) The Claimant contended that an additional deficit should be awarded in the following area:

Inability to vacate in the event of an emergency - The Claimant's case manager testified that the Claimant has Chronic Obstructive Pulmonary Disease (COPD), is obese and needs physical assistance to get off of his sofa at times. She testified that the PAS was not conducted during emergency circumstances, so the Claimant's ability to vacate under such conditions could not be adequately assessed.

The WVMi nurse testified that the Claimant told her he would be able to vacate his residence independently, and would be able to get up with his cane or assistance. She testified that the Claimant does not use oxygen at all times and walked a short distance with his cane during the assessment, demonstrating a steady gait.

The Claimant testified that he has had 10 heart attacks and needs his services under the Waiver program. He testified that he tries to maintain independence, but his heart functions at only 16 percent capacity and that his condition varies throughout the day. He also testified that he has required physical therapy at times and noted this is not reflected on his PAS. The WVMi nurse testified that the Claimant did not report receiving physical therapy during the assessment, and the BoSS nurse testified that physical therapy does not constitute a deficit under the professional/technical care needs section of the PAS.

- 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 – 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 three (3) deficits on a PAS completed by WVMi in November 2006 in conjunction with his Aged/Disabled Waiver Program reevaluation.

- 3) During the hearing, the Claimant contested one area in which a deficit can be awarded - inability to vacate the building in the event of an emergency. Based on the Claimant's medical condition and need for assistance with transfers from a seated position at times, it is reasonable to believe that he would require physical assistance in vacating during an emergency. Therefore, one (1) additional deficit is awarded in the area of inability to vacate.
- 4) The PAS states that the Claimant reported needing either a cane or physical assistance to get up from his sofa. No deficit was awarded on the PAS for one-person assistance with transfers, however, PAS comments and hearing testimony clearly reveal that the Claimant requires physical assistance at times. Therefore, one (1) additional deficit is awarded for physical assistance with transferring.
- 5) The required five (5) deficits have been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program. The Claimant's Level of Care should be adjusted accordingly to reflect his inability to vacate (one additional point) and his need for physical assistance with transfers (Level III- two additional points).

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 25th Day of April, 2007.

Pamela L. Hinzman
State Hearing Officer