



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 970
Danville, WV 25053

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 10, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 14, 2007. Your hearing request was based on the Department of Health and Human Resources' denial of your medical eligibility 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 the 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,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

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

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

_____,
Claimant,

v. Action Number: 07-BOR-729

**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 14, 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 June 14, 2007 on a timely appeal filed February 2, 2007.

It should be noted that the hearing was originally scheduled for April 17, 2007 and was rescheduled at the Claimant's request.

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], Homemaker, Pro Careers
Kay Ikerd, BOSS - participated telephonically
[REDACTED] WVMi - participated telephonically

Presiding at the hearing was Cheryl McKinney, 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 deny 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 December 26, 2006
- D-3 Notice of Potential Denial dated January 3, 2007
- D-4 Notice of Denial dated January 22, 2007

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was being re-evaluated for eligibility under the Title XIX Aged and Disabled Waiver Program.

- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on December 26, 2006 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 bathing, grooming, dressing, and continence.
- 3) The Claimant was sent a Notice of Potential Denial on January 3, 2007 (D-3) and was advised that she had two weeks to submit additional medical information for consideration by WVMI. No additional medical information was submitted.
- 4) WVMI sent the Claimant a Notice of Denial (D-4) on January 22, 2007.
- 5) Representatives for the Claimant contended that additional deficits should be awarded in the following areas:

Walking: The Claimant was rated as walking independently. The Claimant contends that she uses her cane to walk most of the time. The Homemaker testified that she needs the cane for walking. The WVMI nurse testified that she observed the Claimant walk with no difficulty from her home to the car to retrieve her medical card during the assessment and did not use her cane. The Department added that if she used the cane most of the time for walking this would be classified as walking with assistive device and would not be classified as a deficit.

Orientation: The Claimant was rated as intermittently disoriented. The WVMI nurse testified that the Claimant reported during the assessment that she gets the day of the week and month confused and denies disorientation to person and place. The only time she is totally disoriented is sometimes when she has seizures. The Claimant testified that she is sometimes totally disoriented, usually after a seizure. She testified that she has seizures at varying times. She indicated sometimes she will have them several times in a month, but has gone for six (6) months without having them before.

Vacating a Building: The Claimant was rated as being able to vacate a building in the event of an emergency with supervision. The Claimant testified that she uses her cane most of the time, and she feels that under stress she would be likely to have a seizure and would be unable to evacuate a building in an emergency. The WVMI nurse testified that she witnessed the Claimant walk outside the building with relative ease during the assessment, and she rated her as needing supervision due to her comment about becoming upset and being unable to get out. The Claimant testified that she felt the reason she could not evacuate in an emergency is that she would become disorientated due to the stress of the situation. The Homemaker testified that she also felt the Claimant could not evacuate in the event of an emergency.

- 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 four (4) deficits in December 2006 in conjunction with her Aged/Disabled Waiver Program re-evaluation.
- 3) Evidence and testimony presented during this hearing do not support the finding of additional deficits.
- 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 10th Day of July, 2007.

**Cheryl McKinney
State Hearing Officer**