



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

June 10, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 3, 2008. Your hearing request was based on the Department of Health and Human Resources' proposed termination of 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 January 14, 2008 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 Hearings Officer to **uphold** the action of the Department to terminate services under the A/DW program.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS
Oretta Keeney, WVM
[REDACTED] CCIL

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW

Claimant,

Action Number: 08-BOR-986

**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 3, 2008 for _____ on a timely appeal filed March 6, 2008. 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.

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's Witnesses:

_____, claimant

_____, claimant's mother

_____, Homemaker RN, Coordinating Council for Independent Living

Department's Witnesses:

Kay Ikerd, Bureau of Senior Services, by speakerphone

Billy Jo. Sides, WVMi nurse

Presiding at the Hearing was Sharon K. Yoho, 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 their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

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 thru 503.4

D-2 Pre-Admission Screening, PAS, completed January 14, 2008

D-3 Eligibility Determination dated January 14, 2008

D-4 Notice of potential denial dated January 29, 2008

D-5 Notice of denial dated February 13, 2008

VII. FINDINGS OF FACT:

- 1) This claimant is a 52-year-old male whose Aged Disabled waiver case was undergoing a re-evaluation in January 2008. He has primary diagnoses of neuropathy and chronic back pain. Other diagnoses include degenerative arthritis, hypertension, diabetes, obesity and depression.
- 2) A WV Medical Institute (WVMi) Nurse completed a Pre-Admission Screening (PAS) in the claimant's home on January 14, 2008 with the claimant and his mother present. The nurse determined from observation and the answers given to her at the assessment that only two qualifying deficit could be awarded. That qualifying deficits were in the areas of grooming and dressing.

- 3) The claimant introduced issues in the areas of vacating in an emergency, walking, bathing and bladder incontinence.
- 4) The claimant advised the nurse at the assessment that he felt he would have difficulty vacating in the event of an emergency. The nurse observed the claimant ambulate and walk inside the home without hands on assistance. The claimant ambulated the steps from the bottom floor of his home to the second floor without hands on assistance the day of the assessment. The nurse assessed him as being able to vacate in the event of an emergency. The claimant testified that if he had to climb the steps to exit the home, he might have difficulty. The bottom floor has at least one exit to the outside and the upper floor has at least two exits. The chance that he would have to ambulate up the steps would not be likely.
- 5) At the time of the assessment, the nurse observed the claimant ambulate using a cane. He did not need hands on assistance. He advised the nurse that he did not need hands on assistance for walking. The claimant testified that there are times when he needs someone to hold on to him when he walks. There was no indication as to whether this need was in the home or outside of the home.
- 6) At the time of the assessment, the claimant denied having any problems with bladder incontinence and advised that he very rarely has occasions of bowel incontinence. The claimant stated at the hearing that he dribbles urine throughout every day. He reported that he does not wear any kind of pads to help with this problem. He said that he changes his under ware two or three times a day. This claimant was assessed a deficit for dressing. He advised the nurse that on bad days, he cannot get his pants on by himself.
- 7) The claimant advised the nurse during the assessment that he was able to get in an out of his shower by himself and that he was independent with his bath most of the time. He told the nurse that on days with increased pain, he sponge bathes and then needs someone to wash his back, legs and feet. The nurse did not assess a deficit for bathing.
- 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.

12) Aged Disabled Home and Community-Based Services Manual Section 503.4

MEDICAL REEVALUATION:

Annual reevaluations for medical necessity for each ADW member must be conducted.

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 only two qualifying deficits in the areas of grooming and dressing.
- 2) Evidence and testimony provided for this hearing did not support that an additional deficit should not have been assessed in the area of vacating. The claimant might have some difficulty vacating in the rare incidence that he would be on the first floor, could not make it to the exit on that floor, and would have to ambulate the steps. There was no information to support that he would require hands on assistance to vacate.
- 3) The claimant advised the nurse that he did not need any assistance with walking. She observed him ambulate independently. The information the claimant gave at the hearing contradicted the information given at the PAS. He testified that there are times when he needs someone to hold on to him when he walks. He did not indicate when these situations were. Clearly, he did not need hands on assistance to ambulate in his home.
- 4) The claimant advised the nurse that he had no problems with bladder incontinence. He however, advised that he had very rare occasions of bowel incontinence. The information that the claimant gave at the hearing was in direct contrast to this information. He testified that he dribbles urine throughout the day but does not wear any protection. He testified that he instead, changes his under garments two or three times a day. The claimant was assessed a deficit for dressing partly because he needs help putting on his pants. It is not reasonable to believe that a claimant who reports needing help putting on his pants would choose to change his under garments two to three times a day.
- 5) The information regarding bathing that the claimant gave to the evaluating nurse at the time of the PAS was that he needs physical assistance with his bathing on days when he has to sponge bathe. He advised her that someone has to wash his back, legs and feet. The claimant is obese and therefore, one could conclude that he would need help with bathing.
- 6) One additional deficit should have been awarded in the area of bathing. The Department was correct to not award a deficit in the areas of vacating, walking or incontinence. The addition of this deficit does not change the eligibility decision.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I find that the Department was correct in their determination that this claimant is not medically eligible for the ADW program. I am ruling to **uphold** the Department's action to terminate this claimant's services under the Aged Disabled Title XIX (HCB) Waiver program.

IX. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of June 2008.

**Sharon K. Yoho
State Hearing Officer**