



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

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 5, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 21, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny 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: 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 501]

Information submitted at your hearing reveals that you do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 09-BOR-1707

**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 October 5, 2009 for ----- . This hearing was held telephonically 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 September 21, 2009 on a timely appeal filed August 3, 2009.

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.

The ADW Program is defined as a long-term care alternative that provides services to enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

III. PARTICIPANTS:

-----, Claimant

-----, CCIL

-----, WVChoice Care Provider

Kay Ikerd, RN, Bureau of Senior Services

BJ Sides, RN, WVMi

It shall be noted that all participants participated by telephone.

Presiding at the hearing on was Eric L. Phillips, 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 or not the Agency was correct in its action 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 501, 501.3.1.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) completed on June 22, 2009
- D-3 Notice of Potential Denial dated July 9, 2009
- D-4 Denial notice dated July 24, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant is an applicant of benefits under the Aged/Disabled Waiver Program and underwent a medical evaluation to determine if she meets medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) and the Departments witness completed a Pre-Admission Screening (PAS) Exhibit D-2 on June 22, 2009 to determine if the Claimant continued to meet all of the medical eligibility criteria under the Aged and Disabled Waiver Program. Upon completion of the revaluation, the Claimant was awarded deficits in the areas of vacating a building, bathing, grooming, and dressing. It shall be noted that along with the Claimant, representatives from Coordinating Council for Independent Living (CCIL) were all present during the assessment.
- 3) The Claimant was sent a Notice of Potential Denial (Exhibit D-3) on July 9, 2009. The Claimant was notified to submit any additional information within a two week time from the date of receipt to WVMI to be considered, before a final determination would be established.
- 4) Exhibit D-4, Termination of Aged/Disabled Waiver Program, was sent to the Claimant on July 24, 2009 notifying her of termination from the program.
- 5) Claimant and representatives contend that a fifth deficit should be awarded in the area of incontinence. Claimant indicated that she is incontinent more than 1-2 times per day and

that she did not relay this information to the assessing nurse because she feared she would be placed in a nursing home facility. The Claimant testified that she switched physicians and that her previous physician would not release any diagnosis regarding the incontinence for purposes of the assessment. The Claimant's Case Manager contends that a diagnosis of incontinence was later diagnosed by new physician after the time frame had elapsed on Exhibit D-3. The Case Manager from CCIL represented the Claimant during assessment and did not dispute any of the findings at the time of the evaluation. The WVMi nurse testified that she did not observe any urine or use of pads in the home at the time of evaluation. The Homemaker Aide testified that no odor could have been noticed, as she cleans affected areas after all occurrences.

- 6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 (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. The Claimant was awarded four (4) deficits on her January 2009 Aged/Disabled Waiver Program medical evaluation.

- 2) During the reevaluation of medical eligibility, information regarding the presence of incontinence was not relayed to the assessing nurse. The Claimant's Case Manager did not dispute the findings during the assessment or during the available two week period after Notice of Potential Denial was received by the Claimant. A diagnosis of incontinence was obtained from the physician August of 2009, but is irrelevant to the issue under appeal as it was received outside of the period for reconsideration for the June 2009 assessment.
- 3) The WVMi nurse acted upon information that was collected during the assessment and can only make a conclusion based upon the information submitted; therefore the Department was correct in terminating Aged Disabled Waiver Program benefits at the time of assessment.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's action to deny the Claimant's benefits and services 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 _____ day of October 2009.

Eric L. Phillips
State Hearing Officer