



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St
-----ton, WV 25313
304-746-2360 EXT 2227

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 19, 2009

for -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 25, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Aged & Disabled 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 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 Services Manual Section 503).

The information submitted at your hearing reveals that your medical condition does not require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny your benefits and services through the Medicaid, Aged/Disabled Waiver Services Program.

Sincerely,

Jennifer E. Butcher
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Michael E. Bevers, Assistant Attorney General, DHHR, BMS

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

-----,

Claimant,

v.

Action Number: 08-BOR-1783

**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 February 19, 2009, 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 November 25, 2008, on a timely appeal filed May 9, 2008.

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
-----, Counsel for Claimant
-----, mother of Claimant
-----, Homecare provider, Loved Ones
-----, Family Options
Michael E. Bevers, Assistant Attorney General, DHHR, BMS,
Kay Ikerd, RN, BoSS
Paula Clark, WVMI, RN

Presiding at the hearing was Jennifer E Butcher, State Hearing Officer and member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Agency was correct in its decision to deny the Claimant benefits and services through the Medicaid Aged & Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501.3.1, 501.3.2 and 501.3.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501.3.1, 501.3.2 and 501.3.3
- D-2 Pre-Admission Screening (hereinafter PAS) 2000 Form Section V dated April 7, 2008
- D-3 West Virginia Medical Institute (hereinafter WVMI) Independent Review Pre-Admission Screening for Aged/Disabled Waiver Services dated April 11, 2008
- D-4 Notice of Potential Denial dated April 11, 2008
- D-5 Notice of Denial dated April 28, 2008
- D-5 Request for Hearing dated May 9, 2008

VII. FINDINGS OF FACT:

- 1) On April 7, 2008, the Claimant was evaluated (medically assessed) to determine eligibility for participation in the Aged & Disabled Waiver Services Program (hereinafter ADW) Program (Exhibit D-2).

- 2) On or about April 11, 2008, the Claimant was notified of Potential Denial (Exhibit D-4). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least five (5) of thirteen (13) critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 501.2.

Based on your PAS you have deficiencies in only 1 area – Eating.

This notice goes on to advise the Claimant that she could provide additional information regarding her medical condition within the next two (2) weeks for consideration before a final decision is made. However, if no additional information is received within two (2) weeks from the date of the notice, she would be sent a denial notice.

- 3) No additional information was received at WVMi by the end of the two (2) weeks. Therefore the Claimant was notified that her medical eligibility could not be established via a Termination/Denial Noticed dated April 28, 2008 (Exhibit D-5). This notice states, in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been terminated/denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate/deny your homemaker and case management services. You have a right to dispute this decision and ask for a hearing.

Reason for Decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least five (5) of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in one (1) area – Eating.

Because you have less than five (5) deficits at the level required, your services are being terminated/denied.

- 4) The Claimant is a forty (40) year old blind individual who was awarded one deficit through the PAS process. During the Department's presentation it was noted by the WVMi nurse that an additional deficit is to be awarded for grooming, giving the Claimant two (2) out of five (5) deficits. The Claimant asserted that she should be eligible to participate in the ADW Program, as she should have been awarded deficits for vacating the building, bathing, dressing, administering medications and orientation.

Vacating the Building- The WVMi nurse noted on the PAS (Exhibit D-2), the Claimant could vacate the building in case of an emergency. The Claimant stated she could vacate but it would take her a little while, due to her blindness. She was more concerned with what would happen after she was out of the home. Upon cross examination the Claimant testified so that she had inquired about a seeing eye dog and was turned down. According to the Aged and Disabled

Manual Chapter 501.3.2.1 item # 25 a deficit can not given unless a person is mentally or physically unable to remove themselves from the building.

Bathing – The WVMi nurse identified the Claimant as being able to get into the bathtub and bathe herself as long as someone would get the water ready for her and make sure all her bathing supplies were in the same place each time so she could find them. The Claimant also stated that she needs no help with taking a bath; she just needs someone to make sure her bathing supplies are always in the same place. The Claimant was awarded a level one (1) self/prompting. (Exhibit D-2) In order for a deficit to be given the Claimant must have physical assistance to complete this task.

Dressing – The WVMi nurse indicated in her assessment the Claimant can dress herself, but is unable to match up colors. The Claimant stated the homemaker folds and stacks her clothes in the same place so she will know where they will always be for her to get them. She wears shoes with velcro straps most of the time but has trouble with regular tie-up shoe identifying the left from the right when she puts them on. Claimant stated sometimes the homemaker would lay out her clothes for her so things will match. The Claimant was awarded a level one (1) Self/Prompting (Exhibit D-2). In order to receive a deficit for Dressing someone must physically help her put on her clothing.

Administering Medication – According to the documentation presented by the WVMi nurse (Exhibit D-2), the Claimant requires assistance in set-up, and at times someone to remind her to take medications. The Claimant can administer her own medications with prompting and supervision. The Claimant stated her mother will set up the “pill box” and the homemaker will sometimes remind her to take her medications. If her mother is not there to fill the “pill box” the homemaker will read the name of the medication to the Claimant and she will place the pills in the box. Claimant stated if the pills were not in the “pill box” and no one was there she would not be able to take her medications. Because of the Claimant blindness it would be impossible for her to administer her medication by herself, if the medications were not set up in advance. Therefore, Claimant qualifies for a deficit in administering medication.

Orientation – The WVMi nurse documented that the Claimant knew the day’s date, her birthday, address, and phone number. The Claimant’s mother stated her daughter uses her hands and feet to feel her way around the house. The definition for the word “orientation” as it pertains to being a deficit for the Aged/Disabled Waiver Program is if the individual is aware of the current date, time, and place. The evidence provided by the PAS, (Exhibit D-2) the Claimant is orientated to date, time and place. Therefore a deficit could not be awarded.

- 5) Aged/Disabled Home and Community-Based Services Manual Section 501 (Exhibit 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.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 – 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.

7) 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 can vacate the building:
 - a) Independently, b) with supervision, c) mentally unable or d) physically unable to vacate a building. Vacating independently or with Supervision is not considered a deficit.
- #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 states that an individual must have five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.

- 2) The evidence reveals that the Claimant was awarded two (2) deficits for Eating and Grooming on a PAS assessment completed by WVMi in April 2008. An additional deficit should be awarded for Administering Medication. The Claimant is able to take her medications but if she has no one to set the medications up for her she is unable to read the labels to administer the correct dosage.
- 3) The Claimant advocated for five (5) additional deficits for Vacating the Building, Bathing, Dressing, Administering Medications, and Orientation. One additional deficit was awarded for Administering Medication, but without physical assistance required for the other three (3) of the deficits, the increase in the level of the deficits could not be granted. The major concern of the Claimant and her family was her ability to function outside the home. This waiver program is set up to assist individuals in their homes with their basic needs, not needs out side the home.
- 4) The Claimant qualifies for three (3) deficits and therefore medical eligibility for the Aged/Disabled Waiver Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's benefits and services through the Medicaid, 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 19th Day of February, 2009.

Jennifer E. Butcher
State Hearing Officer