



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W. Washington St.
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 31, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 26, 2008. 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 do not meet 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,

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

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

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

-----,

Claimant,

v.

Action Number: 08-BOR-2179

**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 March 31, 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 26, 2008 on a timely appeal filed September 17, 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

██████████ RN, ██████████ County Commission on Aging
██████████ Case Manager, Central West Virginia Aging Services

-----, care provider

Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)

Melody Lehosit, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Jennifer E. Butcher, 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 Section 503

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) completed on August 27, 2008

D-3 Denial notice dated September 12, 2008

Claimant's Exhibits:

C-1 Nurse Review Notes

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Program and underwent an annual medical reevaluation to determine if she continues to meet medical eligibility criteria for the program.
- 2) The West Virginia Medical Institute (WVMI) Nurse completed a Pre-Admission Screening (PAS) medical assessment on August 27, 2008 (D-2) and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse identified three (3) qualifying deficits for the Claimant in the areas of physical assistance with bathing, dressing and grooming.
- 3) The Claimant was sent a Notice of Potential Denial on August 28, 2008 and was advised that she had two weeks to submit additional medical information for consideration.

- 4) The Claimant was sent a final denial notice on September 12, 2008 (D-3).
- 5) The Claimant and her witnesses contended that additional deficits should be awarded in the following areas:

One-person assistance with walking and physical inability to vacate the building in the event of an emergency- The Claimant's witnesses indicated that she may have difficulty vacating her residence in the event of an emergency as she uses oxygen at night and becomes dizzy. In addition, the Claimant was unable to drive at the time the PAS was completed as she had just been released from the hospital.

The ██████████ County Commission on Aging Nurse believes that the Claimant was having a "good day" at the time of the assessment and may have been able to ambulate better on that date. She testified that she has visited the Claimant's home and has observed her dizziness and stumbling at times. The Claimant testified that she sits in her recliner for long periods of time because she falls.

The WVMi Nurse testified that the Claimant ambulated independently with a braced cane and walked through the residence to show her the bedrooms. In regard to vacating, the WVMi Nurse referred to the following PAS comments:

Independent in vacating due to alert and oriented, able to leave home at will, able to motivate about home with use of assistive device at will. Steady good paced gait observed. Reports usually drives regularly and will be allowed to drive again soon with MD release post recent surgery, since post-op restriction is nearly over. Self reports would be able to vacate independently. This validated twice.

The WVMi Nurse testified that the Claimant's Case Manager, nurse and homemaker were present during the PAS and voiced no disagreement with her assessment of the Claimant's ability to vacate. The PAS states that the Claimant "reports today is not a good day but not too bad of a day regarding health and functional status." The Claimant was rated as requiring a supervised/assistive device to ambulate in the home and no deficit was awarded.

The Claimant's witnesses indicated that the Claimant had fallen on August 5, 2008 when she dropped a telephone and attempted to retrieve it. The Claimant had reportedly been on her knees and had fallen forward to the floor during the incident. The Claimant also fell recently and fractured her toe. The witnesses cited the Claimant's transportation needs, however the Bureau of Senior Services Nurse stated that the PAS assessment only considers an individual's functional ability inside the home. The Department's representatives discussed various options available if the Claimant's condition has deteriorated since the PAS was completed.

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 (D-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. The Claimant was awarded three (3) deficits on her August 2008 Aged/Disabled Waiver Program medical reevaluation.
- 2) The Claimant and her witnesses contended that additional deficits should be awarded for one-person assistance with walking and physical inability to vacate the building in the event of an emergency. However, the Claimant was able to ambulate throughout her residence on the date of the assessment utilizing a braced cane (supervised/assistive device). In addition, the Claimant stated that she could vacate her residence independently on the date of the assessment and none of her representatives voiced disagreement with the PAS findings on that date. Therefore, no additional deficits can be awarded in these areas of functionality.
- 3) The required 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 benefits 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 31st Day of March, 2009.

**Jennifer E. Butcher
State Hearing Officer**