



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 29, 2009

Dear -----:

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

Information submitted at your hearing reveals that you do meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 08-BOR-2457

**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 April 21, 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 April 21, 2009 on a timely appeal filed November 18, 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
-----, Claimant's Case Manager, CCIL
-----, Claimant's RN, WV Choice
-----, Claimant's friend
-----, Claimant's Homemaker and friend
[REDACTED] Aging and Disability Resources Center

Kay Ikerd, BOSS
Debra Lemaster, WVMi

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

It should be noted that all participants participated telephonically by Leaderphone.

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 Sections 501

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) assessment completed on October 22, 2008
- D-3 Notice of Potential Denial dated October 27, 2008
- D-4 Fax from Physician's office dated October 27, 2008
- D-5 Denial Notification letter dated November 14, 2008

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for the Title XIX Aged and Disabled Waiver Program during the month of October 2008.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on October 29, 2008 and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse testified the Claimant received four (4) deficits on the Pre-Admission Screening (PAS) assessment in the areas of vacating the building in an emergency, bathing, dressing and grooming.
- 3) The Department sent the Claimant's Case Management Agency, Coordinating Council for Independent Living (CCIL), a Notice of Potential Denial on October 27, 2008 (D-3) advising them that she had two weeks to submit additional medical information for consideration by WVMI. WVMI received confirmation from the Claimant's physician (D-4) that the Claimant is diagnosed with pain, overactive bladder, and obstructive sleep apnea. The Department awarded no additional deficits as a result of this information.
- 4) The Department sent the Claimant a Notice of Denial (D-5) on November 14, 2008. The Claimant requested a hearing on November 18, 2008.
- 5) The Claimant contends she has additional deficits in the following areas:

Incontinence of Bladder: which is under Functional Abilities. The Claimant was rated as "occasionally incontinent". The WVMI nurse recorded the following on the PAS:

Per client has incontinence of urine 2 X week,
denied use of incontinence supplies.

The Claimant testified that she has had this problem all her life, and "wets her pants every day. She explained the reason she did not discuss this in detail with the nurse the day of the assessment is because she was "embarrassed out of her mind". She states she was not using "Depends" at the time of the assessment, and after accidents she would change her underclothes. The Claimant's homemaker testified that she does the Claimant's laundry and knows she has accidents daily. Other witness testimony for the Claimant corroborated this claim. The Claimant takes Vesicare for an overactive bladder. Her doctor confirms this diagnosis. The WVMI nurse states Vesicare is used for "all forms of incontinence".

The Department contends that the claimant is not eligible for a deficit in this area because she reported incontinence two (2) times per week, and would have needed to have this occur at least three (3) times per week to qualify.

Incontinence of Bowel: which is under Functional Abilities. The Claimant was rated as "occasionally incontinent". The WVMI nurse recorded the following on the PAS:

Per client has incontinence of bowel approx [sic] 1
time per week, this just recently started occurring. [sic]

The Claimant testified that “it was a good day for me”. She states she has bowel accidents “just about every day”. No other testimony was offered in support of this claim.

- 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 October 2008 in conjunction with her Aged/Disabled Waiver Program annual re-evaluation in the areas of vacating a building, dressing, bathing and grooming.
- 3) The totality of the evidence and testimony presented during this hearing support the finding of one (1) additional deficit in the area of incontinence. It is clear the Claimant is incontinent of bladder more than three (3) times weekly, which is considered “total incontinence”, and is entitled to a deficit in this area. Testimony provided during the hearing as well as evidence from the PAS support this award. The evidence does not support a finding of “total incontinence” for her bowel function.
- 4) The required five (5) deficits have 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 **reverse** the Agency’s proposal to deny the Claimant’s medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The Department is instructed to consider the deficits and other determinations awarded in this hearing when determining level of care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of April, 2009

**Cheryl Henson
State Hearing Officer**