



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 10, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 4, 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 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 meet medical eligibility requirements for the Aged/Disabled Waiver Program.

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

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 09-BOR-582

**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 10, 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 March 4, 2009 on a timely appeal filed January 9, 2009 and received by the Hearing Officer on January 29, 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.

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
-----, Case Manager, Central West Virginia Aging Services
-----, Claimant's niece and care provider, Central West Virginia Aging Services
Kay Ikerd, RN, Bureau of Senior Services (participated telephonically)
-----, RN, West Virginia Medical Institute (participated telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 action to deny benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Section 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) completed on November 24, 2008
- D-3 Notice of Potential Denial dated December 8, 2008
- D-4 Information from [REDACTED] dated January 5, 2009
- D-5 Letter from Dr. [REDACTED] dated January 29, 2009
- D-6 Denial notice dated December 23, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant was an applicant for 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) Nurse completed a Pre-Admission Screening (PAS) medical assessment on November 24, 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, inability to administer medication, and inability to vacate the building in the event of an emergency.
- 3) The Claimant was sent a Notice of Potential Denial on December 8, 2008 (D-3) 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 December 23, 2008 (D-6).
- 5) During the hearing, the Claimant and her witnesses contended that additional deficits should be awarded in the following areas:

Bladder incontinence- The Claimant testified that she wears panty liners due to bladder incontinence and has to change the liners two to three times per day. She stated that she has worn the liners for years due to urine leakage. The Claimant contended that she had not understood the meaning of incontinence during the PAS assessment and believed she was being asked if she had difficulty going to the bathroom. She also stated that she has memory difficulties. The Claimant's niece/care provider agreed with information presented by the Claimant. Information from Dr. [REDACTED] of [REDACTED] (D-4) states that the Claimant informed Dr. [REDACTED] she has a problem with urinary incontinence, however, no frequency information was provided in the documentation.

The WVMi Nurse testified that the Claimant had denied bladder accidents during the assessment, so no deficit was awarded in this area. She stated that she always assesses bladder incontinence by asking clients if they have bladder/bowel accidents and that the Claimant did not appear confused during the assessment. The BoSS Nurse contended that panty liners are not considered an incontinence product.

Based on information provided during the hearing, one (1) additional deficit is awarded to the Claimant for total incontinence of bladder (more than three incontinent episodes per week).

Physical assistance with dressing- The Claimant – whose diagnoses include morbid obesity, fibromyalgia, spinal stenosis and arthritis - testified that she requires assistance in hooking her bra because she cannot put her arms behind her back. She leaves her shoes tied so that she can slip them on and she has difficulty manipulating buttons. She stated that she does not currently wear her button-up shirts because she has not yet lost enough weight from her gastric bypass surgery. The Claimant's niece/care provider testified that she assists the Claimant with fastening her bras and with dressing mainly when the Claimant goes out of the home. She stated that the Claimant normally wears nightgowns at home. The care provider clarified that the Claimant does have some bras that fasten in the back and she is unable to fasten them without assistance. She testified that the Claimant is able to complete dressing tasks on some days, but cannot fasten/button when she is having a bad day.

The WVMi Nurse testified that the Claimant reported wearing snap-front bras, pull-over shirts and elastic-waist pants, which she puts on herself. The Claimant had reported sitting down to put on socks due to dizziness and had also indicated that she could tie her shoes if they came untied.

As testimony reveals that the Claimant's physical abilities vary from day to day, it is reasonable to believe that she requires assistance with dressing at times. Therefore, one (1) additional deficit is awarded for physical assistance with dressing.

Physical assistance with eating- The Claimant testified that her fingers are numb at times due to carpal tunnel syndrome and arthritis. She indicated that the numbness has worsened

since the time of the PAS. A January 29, 2009 letter from Dr. [REDACTED] (D-5) states that the Claimant has developed a recurrence of carpal tunnel symptoms, resulting in a loss of grip strength. The CWVAS representative testified that the Claimant has also been diagnosed with tremors and cannot hold silverware or cups at times. The care provider indicated that the Claimant cannot open jars or bottles.

According to PAS comments, the Claimant - who reportedly has celiac disease - told the WVMi Nurse that she normally drinks protein shakes or foods that she can tolerate and puree in a food processor. On the date of the assessment, the Claimant reported that she can feed herself, has no trouble cutting up foods and can put foods in the food processor. The BoSS Nurse stated that food preparation is not considered in assessing a client's ability to eat.

As the Claimant's finger dexterity has reportedly worsened in the period since the PAS was completed, no additional deficit can be awarded for physical assistance with eating.

Physical assistance with walking- The Claimant testified that she has arthritis in her knees and has difficulty walking on crutches. She testified that she has fallen and been unable to rise due to poor knee strength. The Claimant's care provider testified that the Claimant has difficulty walking in the home and steadies herself by holding onto walls and countertops. She also uses a cane.

The Claimant was rated as requiring supervision/assistive devices to walk and this assessment is correct based on testimony provided during the hearing. Therefore, no deficit can be awarded for physical assistance with walking.

6) Aged/Disabled Home and Community-Based Services Manual Section 501(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 501.3.1.1 (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 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 three (3) deficits on her October 2008 Aged/Disabled Waiver Program medical evaluation.
- 2) As a result of information provided during the hearing, two (2) additional deficits are awarded to the Claimant in the areas of bladder incontinence and physical assistance with dressing. This brings the Claimant's total number of deficits to five (5).
- 3) The required 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 action to deny the Claimant's benefits under the Aged/Disabled, Title XIX (HCB) Waiver Program. The additional deficits awarded by the Hearing Officer should be considered when determining the Claimant's Level of Care.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of March, 2009.

Pamela L. Hinzman
State Hearing Officer