



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 30, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 14, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through the Medicaid 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 fails to demonstrate that your medical condition required a sufficient number of services and the degree of care necessary 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 action of the Department in its decision to deny your application for benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 09-BOR-1114

**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 July 30, 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 July 14, 2009 on a timely appeal filed April 22, 2009.

II. PROGRAM PURPOSE:

The ADW Program is defined as a long-term care alternative that provides services that 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's wife

-----, Claimant's daughter

Kay Ikerd, RN, BoSS (Participated telephonically)

Debra Lemasters, RN, WVMI (Participated telephonically)

Presiding at the hearing was Thomas E. Arnett, 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 deny the Claimant's application for benefits and services through the Medicaid Aged & Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 501, Section 501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual, Chapter 501
- D-2 Pre-Admission Screening (PAS) assessment completed on 12/29/08
- D-3 Notice of Potential Denial dated 1/5/09
- D-4 Notice of Termination/Denial dated 1/29/09

VII. FINDINGS OF FACT:

- 1) On July 31, 2008, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program (Exhibit D-2).
- 2) On or about January 5, 2009, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 501.3.2.

Based on your PAS you have deficiencies in only 2 areas – Bathing and Grooming

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks. It should be noted that no additional information was received/reviewed.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated January 29, 2009 (Exhibit D-4). 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 5 of the health areas below. Your PAS (Pre-Admission Screening Form) indicated deficiencies in 2 areas – Bathing and Grooming.

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

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates two (2) deficits but indicated the medical assessment completed in December 2008 fails to identify five (5) functional deficits as required by policy. As a result, the Department indicated medical eligibility for participation in the ADW Program can not be established.
- 5) The Claimant, through his representatives, contends that he is medically eligible to participate in the ADW Program as he is also demonstrating a functional deficit in the following areas on the PAS: #24 Decubitus, #26.f. Bowel Incontinence and #28 Medication Administration. A review of the contested areas resulted in the following:

Decubitus – The Claimant’s daughter, who has been employed as a nurse’s aid for fifteen (15) years, testified that her father has a stage 2 decubitus on his bottom. The evaluating RN from WVMI testified that a decubitus was not reported at the time of her assessment and further indicated that a decubitus must be stage 3 or 4 in order to count as a deficit. A review of the PAS (Exhibit D-2) affirms the testimony of the WVMI RN regarding her medical findings at the time and policy clearly states that a deficit can only be awarded if the decubitus is a stage 3 or 4. Based on the evidence, a deficit cannot be awarded for #24 Decubitus.

Bowel Incontinence – The Claimant’s representatives testified that the Claimant is now incontinent of bowel. Documentation found in Exhibit D-2 reveals that the Claimant and his spouse (-----) were present during the medical assessment and both reported that the Claimant was not experiencing bowel or bladder incontinence. While the Claimant’s condition may have deteriorated since the time of the assessment, in the absence of evidence to corroborate or contradict the medical findings documented in the PAS, a deficit cannot be awarded in the area of Bowel Incontinence.

Medication Administration – Testimony submitted on behalf of the Claimant reveals that the Claimant is unable to draw his insulin into a syringe and he is unable to administer his shot. According to the Department, insulin may only be administered by a professional medical provider or a family member. Because a homemaker is not authorized to administer injections, shots administered for insulin or any other medication is not considered a deficit.

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 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 501.3.2 Medical Criteria: 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 states that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. This is the same level of care and services required for an individual to meet a NF (nursing facility / nursing home) level of care.
- 2) The evidence reveals that the Claimant was awarded two (2) deficits on a PAS completed by WVMi in December 2008 – Bathing and Grooming
- 3) The evidence submitted at the hearing fails to identify any additional deficits.
- 4) Whereas the Claimant demonstrates only two (2) program qualifying deficits, 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 action of the Department in denying the Claimant's application for 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 ___ Day of July, 2009.

**Thomas E. Arnett
State Hearing Officer**