



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

November 30, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 24, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid Aged and Disabled Waiver (ADW) Program services based on a finding of medical ineligibility.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2).

The information submitted at your hearing revealed that the Department was correct in its assessment of three deficits and medical ineligibility for the ADW program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny benefits under the ADW Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd
Kim Sang

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

-----,

Claimant,

v.

Action Number: 09-BOR-1490

**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 November 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 September 24, 2009 on a timely appeal, filed June 18, 2009.

All persons offering testimony were placed under oath.

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
-----, Claimant's witness, Cabell County Community Services
Kathy Gue*, RN, West Virginia Medical Institute
Kay Ikerd*, Department Representative

* Participated by speakerphone.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its action to deny Aged and Disabled Waiver Program services to the Claimant based on a finding of medical ineligibility.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2
- D-2 Pre-Admission Screening (PAS) form, dated May 26, 2009
- D-3 Notice of potential denial dated May 27, 2009
- D-4 Notice of denial dated June 11, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant is a 77-year-old female recipient of Aged and Disabled Waiver (ADW) Services. Kim Sang, a registered nurse with the West Virginia Medical Institute (WVMI), completed a pre-admission screening (PAS) assessment of the Claimant on May 26, 2009 (Exhibit D-2) to reevaluate medical eligibility for the program. The Department issued a potential denial notice (Exhibit D-3) on May 27, 2009, and a denial notice (Exhibit D-4) on June 11, 2009. Both notices advised the Claimant that only three deficits were awarded, and that a minimum of five deficits are required for medical eligibility.

- 2) The WVMI nurse for the Department reviewed the PAS and identified the three areas in which deficits were awarded: *grooming, walking, and vacating the building.*
- 3) The Claimant and her witness testified that they dispute the Department's PAS assessment findings in the following areas: *decubitus, incontinence of bladder, incontinence of bowel, wheeling, transferring, and bathing.*
- 4) The Claimant testified regarding *decubitus*, describing sores that she has from wearing incontinence undergarments. The WVMI nurse testified that these sores, as described, were not decubitus sores.
- 5) The Claimant testified regarding *incontinence of bladder* and *incontinence of bowel*. She testified that she orders supplies of incontinence undergarments at the rate of 120 per month. The WVMI nurse testified that there was no mention of the supplies during the assessment, and that she noted on the PAS (Exhibit D-2) the Claimant's description of the frequency of bladder incontinence as "not real often," and bowel incontinence as "occasional." During the assessment, the WVMI nurse noted the last incident of bowel incontinence as three to four weeks prior to that date.
- 6) The Claimant testified regarding *wheeling* and *transferring* as described on the PAS – wheeling independently and transferring with supervision or an assisted device. The WVMI nurse testified that she witnessed the Claimant wheel independently in the home on the day of the PAS assessment. The WVMI nurse noted on the PAS, regarding transferring, that the Claimant "...can stand and pivot herself to transfer."
- 7) The Claimant testified that, with regard to *bathing*, she has been occasionally told by her homemaker to not shower without assistance. The WVMI nurse testified that she was told on the day of the PAS assessment that the Claimant showers alone, without assistance.
- 8) -----, the Claimant's witness from [REDACTED] County Community Services, attempted to review the findings from other assessments of the Claimant's medical condition. The Department objected to discussion of these assessments because of their lack of proximity to the May 26, 2009 PAS, and the objection was sustained. Additionally, the assessments were not submitted to the State Hearing Officer and the Department by the deadline given in the scheduling notice for the hearing.

- 9) Kay Ikerd, representative from the Department’s Bureau of Senior Services, presented the applicable policy from the Aged and Disabled Home and Community-Based Services Waiver Policy Manual §501.3.2 (Exhibit D-1), which states as follows:

501.3.2 MEDICAL CRITERIA

An individual must have five (5) deficits on the Pre-Admission Screening Form (PAS), Attachment 14, to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section	Description of Deficits	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for outside the home.)
#27	Individual has skilled needs in one or more of these areas: (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.	

All of the above medical criteria information also applies to Personal Options.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for the ADW Program services. The WVMI nurse determined, at the time of the PAS, that the Claimant had three qualifying deficits. Although the Claimant identified *decubitus*, *wheeling*, *transferring*, and *bathing* as areas of dispute with the Department's findings, her testimony either confirmed the findings on the Department's PAS assessment or revealed her misunderstanding of the underlying medical condition or policy criteria.
- 2) Testimony and evidence regarding *incontinence of bladder* and *incontinence of bowel* failed to demonstrate that the Department should have assessed the Claimant as incontinent in either area. The Claimant testified regarding her use of incontinence supplies, but failed to mention these supplies during her assessment or to describe a frequency of incidents of incontinence in either area sufficient for a finding of incontinence. The Department was correct to assess no deficits in these areas.
- 3) With only three deficits, medical eligibility could not be established, and the decision of the Department to deny ADW services is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of November, 2009.

Todd Thornton
State Hearing Officer