



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

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

December 4, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 12, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Medicaid Eligibility under the Aged and 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 and Disabled Waiver Program is based on current policy and regulations. 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]

The information submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home and Community Based Services Waiver Program.

It is the decision of the State Hearings Officer to Uphold the proposal of the Department to terminate your eligibility for benefits and services under the Aged and Disabled Waiver Program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Board of Review
Kay Ikerd, RN BoSS

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

-----,

Claimant,

v.

Action Number: 09-BOR-1732

**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 December 4, 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 12, 2009 on a timely appeal, filed August 19, 2009.

It should be noted here that the claimant's benefits under the Aged and Disabled Waiver program continue at the previous level.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (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 (was present but did not participate)
-----, Claimant's Representative and daughter
Kay Ikerd, RN BoSS
Tammy Kessell, RN WVMI

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its decision to terminate the Claimants benefits and services under the Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501 - Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening Assessment dated July 28, 2009
- D-3 Notice of Potential Denial dated July 30, 2009
- D-4 Notice of Denial dated August 14, 2009

Claimants' Exhibits:

- C-1 Physicians statement for [REDACTED] M.D.

VII. FINDINGS OF FACT:

- 1) On July 28, 2009, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for her continued eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, the Pre-Admission Screening Assessment (PAS).
- 2) On July 30, 2009, the Claimant was notified by Exhibit D-3 Notice of Potential Denial; that she may be ineligible for services provided by the Aged and Disabled Waiver Program. This notice in pertinent part documents:

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 503.2.

Based on your PAS you have deficiencies in only 4 areas. Eating, Bathing, Grooming, and Skilled Needs.

This notice allowed the Claimant to submit additional information regarding her medical condition to WVMi within a two week timeframe.

- 3) The Claimant was notified on August 14, 2009 via Exhibit D-4, Notice of Denial, that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents in 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 Aged and disabled Waiver Program. A decision has been made to terminate/deny your homemaker and case management services. You have the 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 the areas of eating, bathing, grooming, and skilled needs.

- 4) ----, the Claimant's representative and daughter, testified that additional deficits should be awarded in the areas of transferring and dressing.

Transferring- The Claimant's representative indicated that her mother has some issues with dizziness. She testified that her mother had "dizzy spells" and slipped and fell while getting out of the bathtub. After her mother's accident, the Claimant's physician, [REDACTED] M.D. wrote the following statement Exhibit C-1, this statement reads:

---- has multiple medical issues and needs assistance. Her daughter ---- is taking care of her at home.

It shall be noted that this physician's statement was not considered during the Claimant's assessment process. The WVMi nurse testified that the statement was too vague and did not list specifics regarding the Claimant's condition. The WVMi nurse testified that even if she would have received this statement during the assessment process she would not have amended her decision on the PAS.

In order to establish a deficit in the area of transferring, an individual must require one-person or two-person assistance in the home. Testimony from the Claimant's representative did not support any other inability to transfer other than during the bathing process; therefore a deficit **cannot** be awarded in the area of transferring.

Dressing-The Claimant's representative further testified that her mother suffers from arthritis and the condition only affects her mother's ability to dress during the winter months. The Claimants representative testified that during these months her mother has poor range of motion in her arms and made it difficult for her to dress independently.

In order to establish a deficit in the area of dressing, an individual must require physical assistance to perform the daily function. Testimony revealed that the Claimant requires physical assistance during the winter months and did not require any physical assistance in dressing during the time of the PAS assessment. The Claimant did not have this inability during the time of the assessment and a deficit **cannot** be awarded in the area of dressing.

5) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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.

6) 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.

7) 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) tracheotomy, (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 in order to be determined eligible for services under the Aged and Disabled Waiver Program an individual must be deficient in at least five (5) health areas on the Pre-Admission Screening Assessment (PAS).
- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the health areas of eating, bathing, grooming, and skilled needs.
- 3) Evidence presented during the hearing did not establish any additional deficits to the Claimant and her total number of deficits awarded remain at four (4).
- 4) The Claimant demonstrates four (4) qualifying deficits; therefore the Department was correct in its decision to terminate medical eligibility under the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearings Officer to uphold the proposal of the Department to terminate the Claimants eligibility under the Aged and Disabled 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 December 2009.

**Eric L. Phillips
State Hearing Officer**