



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review

P.O. Box 1736

Joe Manchin III
Governor

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

December 7, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 13, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services 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. These regulations provide that 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 which was submitted at your hearing revealed 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 Phillips
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Kay Ikerd, RN, BoSS

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

-----,

Claimant,

v.

Action Number: 09-BOR-1770

**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 7, 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 13, 2009 on a timely appeal, filed August 25, 2009.

It should be noted here that the claimant's benefits under the Aged and Disabled Waiver program continue at their previous level of eligibility pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver (ADW) is administered by the West Virginia Department of Health & Human Resources. 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
-----, Homemaker Aide-Hampshire County Committee on Aging
-----, RN-Case Manger, Hampshire County Committee on Aging
-----, Homemaker RN, Hampshire County Committee on Aging
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 action to terminate the Claimant's benefits and services through the Medicaid Aged and Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501.

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 July 24, 2009
- D-3 Notice of Potential Denial Dated July 30, 2009
- D-4 Notice of Denial dated August 21, 2009
- D-5 Statement from [REDACTED] PA-C dated August 11, 2009
- D-6 Evaluation from Dr. [REDACTED] dated June 2, 2009.

VII. FINDINGS OF FACT:

- 1) On July 24, 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.
- 2) On July 30, 2009, WVMI issued the Claimant Exhibit D-3, Notice of Potential Denial. This notice documents 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 503.2.

Based on your PAS you have deficiencies in only -0- areas.

This notice allowed the Claimant to submit additional medical information regarding her medical condition to WVMI within a two week timeframe. It shall be noted that additional information was received August 11, 2009 and considered in the assessment of the Claimant.

- 3) Upon review of additional information, the Claimant was notified August 21, 2009 that her medical eligibility could not be established for the Aged and Disabled waiver Program. Exhibit D-4, Notice of Denial 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 A/D 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 -0- areas.

- 4) Tammy Kessel, WVMi Registered Nurse, testified on her findings from the Pre-Admission Screening Assessment, Exhibit D-2. She testified that her assessment of the Claimant was based on the Claimant's functional abilities in the home. Through observation and conversation with the Claimant, Ms. Kessel assessed the Claimant to have zero deficiencies in the necessary health areas.
- 5) The Claimant and her representatives contend that deficits should have been awarded in the health areas of bathing, grooming, walking, transferring, orientation, vacating, and eating.

Eating-The Claimant testified that she has carpal tunnel that has left her with weakness in her hands. She testified that due to the carpal tunnel she cannot cut up her own food and has to pick food up with her fingers to eat. The Department testified that the Claimant's hand grips were moderately strong and equal at the time of the assessment. During the evaluation, the Claimant testified that she had some difficulties when her hands went numb but denied the need for assistance in the area of cutting up her food. The Department testified that the Claimant did not reveal any trouble or problems in the area of eating during the assessment.

The WVMi nurse bases her assessment on observations and information relayed from the individual. Exhibit D-6, Evaluation from [REDACTED] documents that the Claimant had no limb weakness at the time of his evaluation. The Claimant related no difficulties in the functional abilities to the assessing nurse; therefore a deficit **cannot** be awarded in the area of eating.

Vacating-----, Homemaker RN, testified that the Claimant would be unable to vacate her home during an emergency if she was having a "dizzy spell". She testified that the Claimant suffers from these "dizzy spells" as well as severe headaches on a consistent basis. She testified that the Claimant is unable to maneuver throughout her home without using her furniture for support. -----, the Homemaker Aide, testified that the Claimant needs help everyday to walk throughout her home. She testified that the Claimant should use a walker in her home but doesn't as she tries to be independent. The Claimant testified that she has these "dizzy spells" often and it makes it difficult for her to walk and properly function. She stated

that she suffers from these spells due to loss of blood flow to her heart. She testified she is currently under a Physician's care for the "dizzy spells" and severe headaches. Exhibit D-6, Evaluation from [REDACTED] M.D., documents that the Claimant suffers from longstanding coronary artery disease as well as other problems associated with her heart. The exhibit also documents she has occasional dizziness and tiredness. The Claimant testified that she misunderstood the question involving her ability to vacate her home during an emergency. The Claimant understood the question to be whether she had a door to evacuate from and whether she has easy access to get out of her residence. The WVMI Nurse testified that the entry to the Claimant's residence is completely flat and the Claimant stated that she would not have any trouble vacating her residence during the assessment. Furthermore, the WVMI observed the Claimant ambulating outside her home and back inside her home during the assessment.

Testimony revealed that the Claimant uses furniture and fixtures to ambulate throughout her residence. The entry way to the Claimants residence is completely flat and easily accessible. At the time of the evaluation, the Claimant did not relay any information to the assessing nurse regarding any inability to vacate her home during an emergency; therefore a deficit **cannot** be awarded in the area of Vacating.

Orientation-----, Homemaker Aide, testified that the Claimant has orientation issues due to her "dizzy spells". -----, Homemaker RN, testified that the Claimant's decreased Cardiac output places the Claimant in a disoriented state. The WVMI Nurse testified that the Claimant is not disoriented to person, place, and time and that the Claimant signed the consent form without any prompting to complete.

Testimony revealed that the Claimant, per PAS assessment, knows her way around her home and all visitors to her home. In order to qualify for a deficit in the area of orientation, an individual must be totally disoriented or comatose. The Claimant is not totally disorientated in a mental capacity; therefore a deficit **cannot** be awarded in the area of orientation.

Transferring-The Claimant stated during her assessment that she has a lift chair and informed the assessing nurse during the evaluation that she tries to get out of the lift chair on her own and will try to accomplish this as long as her abilities will allow. The Claimant's testimony revealed that she tries to do as much as she can without relying on others. She purported that her severe headaches and "dizzy spells" make it difficult for her to accomplish the task of transferring by herself. -----, Homemaker Aide, testified that the Claimant tries to be too independent and sometimes refuses help as she tries to accomplish tasks on an independent basis. The WVMI assessing nurse testified that the Claimant uses her hands to transfer out of her lift chair and the PAS assessment documents that the Claimant does not use the lift portion of her chair. Testimony from the assessing nurse revealed that the Claimant was evaluated at a needing an assistive device in the area of transferring.

In order to qualify for a deficit in the area of transferring, an individual must require one or two person assistance in the home. The Claimant's testimony indicated that she tries to be as independent as her abilities will allow and does not require assistance when transferring in her home. The Claimant's testimony did not support any evidence in the area of transferring; therefore a deficit **cannot** be awarded in the contested area.

Walking- -----, Nurse/ Case Manager [REDACTED] County Committee on Aging, testified that the WVMI Nurse evaluated the Claimant on one of her good days. She testified that the Claimant was undergoing treatments from her cardiologist to counteract some of the issues the Claimant associated with her headaches, dizziness, and loss of balance. Ms. [REDACTED] testified that the assessment was not a true reflection of the Claimant's capabilities as the treatment relieved some of the Claimant's problems. Testimony from the Claimant revealed that she is "dizzy" on a daily basis. The Claimant testified that occasionally some of these "dizzy" spells are worse than others. The Claimant stated that the severe "dizzy" spells are occasional and that she suffers from an acute headache once a week. Testimony from the Claimant and her representatives indicated that when the Claimant suffers from these spells she has difficulty walking and she must grasp her furniture to ambulate throughout her home. The WVMI Nurse testified that the Claimant does not use an assistive device when ambulating in her home and observed that the Claimant did not hold onto any objects to ambulate during the assessment. The Claimant was assessed as not requiring assistance during the PAS assessment.

In order to qualify for a deficit in the area of walking, an individual must require one-person assistance in the home (Level III). The Claimant's use of furniture and fixtures to ambulate throughout her residence would evaluate her as a Level II; therefore a deficit **cannot** be awarded in the contested area.

Grooming-The Claimant stated that the Homemaker Aide sometimes washes her hair and "puts her hair up". The Claimant testified that she uses hand creams and lotions and uses them to prevent sores. The Claimant testified that the Homemaker Aide assists her in applying the lotions and creams. The Claimant stated that she does not use any prescription creams or lotions. The Department representative testified that the way an individual's styles ones hair does not qualify the individual for a deficit.

In order to qualify for a deficit in the area of grooming an individual must require physical assistance. Testimony from the Claimant revealed that the Homemaker Aide occasionally washes her hair and applies non-prescription creams and lotions to her body. The Claimant does not require assistance on a consistent basis in the area contested; therefore a deficit **cannot** be awarded in the area of grooming.

Bathing-The Claimant testified she requires assistance in the area of bathing. She stated that she requires assistance to wash her back. The Claimant also testified that she has knee trouble and requires assistance to get in and out of the bathtub. The Claimant further testified that she bathes herself in the evening when she is alone and tries to bathe independently as the Homemaker Aide is not assisting her twenty-four hours a day. The Claimant purported she tries to be independent and occasionally relies on assistance. The statements made to the assessing nurse during the assessment seem to be of a contradictory nature. The Claimant stated that she required assistance washing her back and stated that the Homemaker Aide assisted her "once in a while". The Claimant reported to the assessing nurse that she takes her own showers and performs the function independently. The Claimant's testimony revealed that she bathes herself on a regular basis in the summer months and sparingly in the winter months. Furthermore, the Claimant claimed she tries to perform most tasks independently without assistance from others.

In order to qualify for a deficit in the area of bathing and individual must require physical assistance. Testimony from the Claimant revealed that she needed assistance in washing her

back but also stated that she performs the task without assistance during the evening hours. The ability of the Claimant to perform the task without assistance verifies that the Claimant has the capability to perform the function of bathing independently; therefore a deficit **cannot** be awarded in the area of bathing.

6) 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.

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) 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 not awarded any deficits in any of the qualifying health areas.
- 3) Evidence presented during the hearing did not support the determination to grant any additional deficits to the Claimant in any of the qualifying health areas and the Claimants number of deficits remains at zero.
- 4) The Claimant demonstrates zero 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 Hearing 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**