



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 8, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 18, 2009. Your hearing request was based on the Department of Health and Human Resources' termination of your medical eligibility 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 no longer meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 09-BOR-932

**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 June 18, 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 June 18, 2009 on a timely appeal filed March 19, 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

-----, Claimant's mother

██████████ Claimant's Case Manager, CCIL

Kay Ikerd, BOSS, participated telephonically

Teena Testa, WVMI, participated telephonically

Presiding at the hearing was Cheryl Henson, State Hearing Officer and 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 proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 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) assessment completed February 12, 2009
- D-3 Notice of Potential Denial dated February 17, 2009
- D-4 Notice of Denial dated March 5, 2009

Claimant's Exhibits:

- C-1 Letter from Dr. ---- dated June 17, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for the Title XIX Aged and Disabled Waiver Program during the month of February 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on February 12, 2009 and determined that the Claimant no longer meets medical eligibility criteria for the program. The nurse testified the Claimant received three (3) deficits on the Pre-Admission Screening (PAS) assessment in the areas of bathing, grooming and continence.
- 3) The Department sent the Claimant a Notice of Potential Denial (D-3) on February 17, 2009. No additional documentation was submitted. The Department sent the Claimant a Notice of Denial on March 5, 2009. The Claimant requested a hearing on March 19, 2009.
- 4) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Vacating a Building in an Emergency: which is under Functional Abilities. The Claimant was rated as being able to vacate "with supervision". The WVMI nurse recorded the following on the PAS:

In the event of an emergency client states she could not get out of the home if she were asleep and states she would not be able to hear a fire. Client would need only supervision to exit the home as her gait was

steady as she walked within the home.

The Claimant testified that she lives in an upstairs apartment and has two doors side by side. She states when she naps she must lie on her “good ear” because it hurts to lie on the other ear due to problems from previous brain surgery. She states she cannot hear anything when she sleeps. She states she lives alone and has twenty (20) to twenty six (26) steps to travel.

Walking: which is under Functional Abilities. The Claimant was rated as walking “independently”. The WVMI nurse recorded the following on the PAS:

When it comes to walking client did meet Sandy and myself at the doorway when we arrived. Her gait was steady. She was noted to be holding onto any furnitures [sic]. Client had to get up a couple of times during the assessment. She went into her bedroom to get her medications and her gait was steady then. Client also walked us to the door as we left her home. Gait was steady.

The WVMI nurse added during testimony that the third sentence in her recording is incorrect. She meant to record that the Claimant was “not” noted to be holding onto any furniture. The Claimant’s witnesses stated this was a good day for her, and that on “normal” days she must walk with a cane. There is no documentation that the nurse inquired as to the Claimant’s normal functioning levels in the home in regard to walking. The Nurse testified that she usually inquires as to normal or usual functioning abilities and documents the response; however, she noted that she does not remember whether she asked or not. The Claimant would need to be rated as needing “one person assistance” in order to qualify for a deficit in this area.

Dressing: which is under Functional Abilities. The Claimant was rated as being “self/prompting” in this area. The WVMI nurse recorded the following on the PAS:

When it comes to dressing client states she is able to get her shirts on herself. Client notes she does not wear bras in the home, but if she goes out she does. Client notes she can get her bras on and snap them herself. Client notes she is able to get her pants on herself as long as she is sitting down. Client notes she is able to get her shoes and her socks on herself. I ask [sic] the client is [sic] she needed any help and she states she is able to get her clothes on herself.

The Claimant testified that sometimes she is so weak and in pain that she needs more assistance. She states the pain patches are not working well. She did not deny that she gave the information recorded by the Nurse on the date of the assessment.

Transferring: The Claimant was rated as transferring “independently” in this area. The WVMI nurse recorded the following on the PAS:

When it comes to transferring client sleeps in a regular bed. Client states she is able to get herself in and out of the bed. Client is able to get herself on and off the commode. Client sat in her recliner chair and was able to put the foot rest up and lean back in her chair.

The Claimant testified that for the most part she can get around in her home with her cane, but when her blood pressure is up she gets dizzy and functions like an alcoholic. She stated the medicine makes her unsteady. The Claimant's mother added that without her medicine she gets psychotic, and sometimes she needs someone to get her by the arm and help her to transfer.

5) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1)- Member Eligibility and Enrollment Process:

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 501.3.1.1 – Purpose: The purpose of the medical eligibility review is to ensure the following:

A. New applicants and existing members are medically eligible based on current and accurate evaluations.

B. Each applicant/member 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 (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.
- 2) The Claimant received three (3) deficits in February 2009 in conjunction with her Aged/Disabled Waiver Program annual re-evaluation in the areas of bathing, grooming, and continence.
- 3) The totality of the evidence and testimony presented during this hearing support the finding of one (1) additional deficit in the area of vacating a building. The Claimant clearly reported during the PAS assessment she would not always be able to get out of the building in the event of an emergency. Although she can walk out of the building with supervision, she needs someone to physically touch her in order to alert her to an emergency during times when she is lying down or sleeping. She cannot hear verbal communications during these times due to the damage to her ear.
- 4) In regard to walking, although the Claimant uses a cane at times to walk, she would need to qualify for "one person assistance" in order to qualify for a deficit in this area. The evidence does not support a deficit here. The Claimant also failed to provide sufficient evidence to support deficits in dressing and transferring. She clearly reported during the assessment that she can perform these activities without assistance.
- 5) The required five (5) deficits have not 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 **uphold** the Agency's proposal to deny the Claimant's medical eligibility under the 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 8th Day of July, 2009

**Cheryl Henson
State Hearing Officer**