



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

July 26, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 13, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical 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. Some of these regulations state as follows: The Aged and 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 and Disabled (HCB) Services Manual Section 501]

Information submitted at your hearing reveals that you do not meet the medical eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to deny your application for the Aged and Disabled Waiver Program.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services

-----, [REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO: 11-BOR-1069

**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 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 via videoconference on July 13, 2011, on a timely appeal filed April 14, 2011.

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

-----, [REDACTED] Claimant's witness

-----, Claimant's witness

Brian Holstein, WV Bureau of Senior Services, Department's representative
Kathy Gue, RN, West Virginia Medical Institute, Department's witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to terminate Claimant's participation in the Aged and Disabled Home and Community-Based Waiver Program based on a yearly Pre-Admission Screening conducted on February 23, 2011.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community-Based Services Manual Section 501.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community-Based Services Manual Section 501.3.
- D-2 Pre-Admission Screening (PAS) assessment conducted on February 23, 2011.
- D-3 Potential denial letter from APS Healthcare, dated March 1, 2011.
- D-4 Denial letter from APS Healthcare, dated March 22, 2011.

Claimant's Exhibits:

- C-1 Written statement from Jason Frazer, MD, dated May 13, 2011.

VII. FINDINGS OF FACT:

- 1) Claimant was a participant in the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of his continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in his home on February 23, 2011. (Exhibit D-2.)
- 2) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.3.2 (Exhibit D-1) MEDICAL CRITERIA states in pertinent part:

An individual must have five (5) deficits on the Pre Admission Screening (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.

#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: (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.

- 3) Department's witness testified that she conducted the PAS on February 23, 2011 in the Claimant's home. She stated that Claimant and Claimant's case manager were present. She added that she subsequently determined Claimant received two (2) deficits on the PAS assessment for eating and continence, and therefore did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department sent the Claimant a Notice of Potential Denial dated March 1, 2011. (Exhibit D-3.) The notice was addressed to Claimant and mailed to 285 Fourth Avenue, -----, Claimant's address at that time. This notice stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WVMi within the next 2 weeks."
- 5) Claimant testified that during the PAS, he overestimated his abilities due to a sense of pride. Claimant's witness, his home health case manager, testified that he thought the WVMi assessing nurse did a good job on the PAS, but it was his professional opinion that on the PAS, Claimant was unrealistic in his assessment of his abilities and should have received more deficits than were noted. Claimant and his witnesses

asserted that he should have received deficits in the areas of vacating a building in the event of an emergency, bathing, grooming, dressing, transferring and walking.

- 6) ***Vacating a building in the event of an emergency:*** The WVMI nurse rated the Claimant as “with supervision” and wrote, “[Claimant] says that in the event of an emergency he could vacate the home. Says that he has had that experience and had to crawl out of the home.” Claimant’s witness, his home health case manager, testified that the fact that Claimant had to crawl out of his home during the emergency illuminates the fact that he cannot vacate. The manager stated that Claimant crawled out of his home because his survival instinct “kicked in” and he normally would not be able to do this without assistance. Department’s representative stated that because Claimant told the assessing nurse that he crawled out of his home during an actual emergency, that indicated to the nurse that he had the ability to vacate with supervision.
- 7) ***Bathing:*** The WVMI nurse rated the Claimant at a Level 1, “Self/Prompting,” and wrote, “[Claimant] showers on a shower chair. He washes his back with a sponge on a stick. He says that he does this area of care on his own.” Claimant’s witness testified that Claimant has moved to an apartment which has two floors, with the main bathroom on the second floor, therefore it is hard for him to get to the bathroom in order to bathe. Claimant testified that he has difficulty getting into and out of the bathtub.
- 8) ***Dressing:*** The WVMI nurse rated the Claimant at a Level 1, “Self/Prompting,” and wrote, “[Claimant] denies needing help with dressing. He says the weight of a shirt hurts his back.” Claimant’s witness testified that Claimant cannot lift his arms in order to put on or remove a pull-over shirt. She stated that he cannot bend over to tie his shoes.
- 9) ***Grooming:*** The WVMI nurse rated the Claimant at a Level 1, “Self/Prompting,” and wrote, “[Claimant] washes his hair while in the shower. He shaves and trims his beard himself. Denies needing help with combing his hair. No teeth. He says that he will tear off his fingernails and file the rough edges. Denies needing help with clipping toenails.” Claimant’s witness testified that Claimant cannot groom himself adequately because he cannot lift his arms above his head in order to comb his hair.
- 10) ***Transferring:*** The WVMI nurse rated the Claimant at a Level 2, “Supervised/Assistive Device,” and wrote, “Observed [Claimant] get to a standing position from the kitchen table by using the table to push up.” Claimant testified that he cannot stand up without holding onto something, and even this is with some difficulty.
- 11) ***Walking:*** The WVMI nurse rated the Claimant at a Level 2, “Supervised/Assistive Device,” and wrote, “Observed [Claimant] walk in the home independently. He throws the left leg, unsteady gait noted. Cane is used outside the home.” Claimant

testified that he has a great deal of difficulty walking. He stated that he can walk but he is considered a paraplegic because he has no feeling in his legs.

- 12) On the "Nurse's overall comments" section of the PAS, the assessing nurse noted in a section not directed toward any potential deficit area in particular, "Observed [Claimant] sign the consent form with a pen without difficulty. Observed him reach over his head and down to his toes."
- 13) Claimant submitted into evidence a written statement from his physician, [REDACTED] MD, dated May 13, 2011. (Exhibit C-1.) This statement reads as follows:

To Whom It May Concern:

[Claimant] has an injury sustained from a gunshot wound to his back. He has several problems from this including chronic pain, abnormality of gait, partial neurogenic bladder, and generalized anxiety. He has been under my medical supervision since November 2008. In my opinion, while he can perform some tasks of activities of daily living on his own, he would benefit from a caregiver at least part of the time. I believe this would contribute to his overall quality of life.

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. On his PAS that was performed on February 23, 2011, Claimant was assessed with two (2) deficits.
- 2) The Department was correct in its decision to not award deficits for the other areas of the PAS Claimant and his witnesses listed. Claimant testified that he overestimated his abilities to the nurse who conducted the PAS. The purpose of the hearing and subsequent decision is not to reassess the Claimant for deficits, but to determine if the Department reached the correct decision based on current policy and the information reported on the PAS.
- 3) Claimant's submission of a written statement from his physician did not provide substantial evidence which would lead to assessing additional deficits. Also, the Notice of Potential Denial (Exhibit 3) informed Claimant that any information which could lead to assessing him with additional deficits should have been submitted to the WVMI within two weeks of the date of the Notice, March 1, 2011. The letter from Claimant's physician was dated May 13, 2011, after the two-week time period had passed.
- 4) Claimant provided no testimony or evidence to support a finding that additional deficits should have been awarded in the assessment; therefore, 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 Claimant's application to 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 26th Day of July, 2011.

**Stephen M. Baisden
State Hearing Officer**