



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

October 25, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 14, 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 terminate your participation in 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-1402**

**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 conducted by telephone conference call on October 14, 2011, on a timely appeal filed June 1, 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

-----, Claimant's Witness

Sarah Birckhead, RN, 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 (PAS) conducted on April 19, 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 April 19, 2011.
- D-3 Potential denial letter from APS Healthcare, dated April 26, 2011.
- D-4 Denial letter from APS Healthcare, dated May 11, 2011.

**Claimant's Exhibits**

- C-1 Letter from [REDACTED] MD, dated September 9, 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 her continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in her home on April 19, 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 (Exhibit D-2) on April 19, 2011 in the Claimant's home. She stated that the Claimant and she were the only persons present. She added that she assessed Claimant with four (4) deficits on the PAS, for eating, grooming, dressing and continence, and therefore she did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department sent the Claimant and Claimant's Case Management Agency a Notice of Potential Denial dated April 26, 2011. (Exhibit D-3.) 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." The PAS does not indicate that the Department received any additional medical information. The Department sent a Notice of Termination/Denial on May 11, 2011. (Exhibit D-4.)
- 5) Claimant asserted that Claimant should have received additional deficits in the areas of vacating a building during an emergency, bathing, transferring and walking.
- 6) ***Vacating a building in the event of an emergency:*** The WVMi nurse rated the Claimant as "with supervision" and wrote in the "Nurse's overall comments" section of the PAS, "Observed [Claimant] go outside the home on [two] separate occasions

during the visit when someone came to her door.” Claimant’s witness testified that it would be impossible for Claimant to evacuate her home in the event of an emergency if she were alone. Claimant’s witness did not testify as to why Claimant would not be able to vacate.

- 7) **Bathing:** The WVMi nurse rated the Claimant at a Level 1, “Self/Prompting” and wrote “[Claimant] showers and says that she can get in and out of the shower and wash her body without assist.” Neither Claimant nor her witness provided any substantive evidence or testimony regarding this area of the PAS.
- 8) **Walking:** The WVMi nurse rated the Claimant at a Level 1, “Independent.” She testified that Claimant’s home is on a hill above the area where her visitors park their cars. The nurse wrote on the PAS, “Observed [Claimant] walk down hill independently, she says she walked up the hill this morning.” Neither Claimant nor her witness provided any substantive evidence or testimony regarding Claimant’s ability or inability to walk.
- 9) **Transferring:** The WVMi nurse rated Claimant at Level 2, “Supervised/assistive device,” and wrote, “Observed [Claimant] get to a standing position by using the arms of the chair to push up.” Neither Claimant nor her witness provided any substantive evidence or testimony regarding Claimant’s ability or inability to transfer from sitting to standing.
- 10) Claimant submitted as evidence a statement from her primary care physician dated September 9, 2011, which reads as follows:

This letter is in regards to [Claimant]. [Claimant] is currently under my care for multiple medical conditions. Due to her medical conditions she needs assistance with grooming, preparing meals and with house keeping.”

Department’s representative argued that Claimant was assessed with a deficit for grooming, and preparing food and performing household chores are not areas in which deficits are assessed.

### **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 her PAS that was performed on April 19, 2011, Claimant obtained four (4) deficits.
- 2) The Department was correct in its decision not to assess a deficit in the area of vacating a building during an emergency. Department’s witness testified and recorded on the PAS that she observed Claimant go outside to speak with visitors while the PAS was being conducted.

- 3) The Department was correct in its decision not to assess a deficit in the area of bathing. Department's witness testified and recorded on the PAS that Claimant told her she got into and out of the shower without assistance.
- 4) The Department was correct in its decision not to assess a deficit in the area of walking. Department's witness testified and recorded on the PAS that she observed Claimant walking outside of her home.
- 5) The Department was correct in its decision not to assess a deficit in the area of transferring. Department's witness testified and recorded on the PAS that she observed Claimant stand up without assistance from the chair in which she was sitting by holding onto the chair's arm rests.
- 6) Claimant provided no testimony or evidence to support a finding that an additional deficit 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 and Disabled Waiver Program.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate Claimant's participation in 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 25<sup>th</sup> Day of October, 2011.**

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**Stephen M. Baisden  
State Hearing Officer**