



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

Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

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

September 29, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 27, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny 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 (HCB) Title XIX Waiver Services program is based on current policy and regulations. These regulations provide that the 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]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver program.

The information which was submitted at your hearing revealed 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 action of the Department to deny your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

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

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Service

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-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 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 a timely appeal, filed July 12, 2011.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program, hereinafter ADW, 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 Birkhead, Nurse Monitor-Bureau of Senior Services (BoSS)

Karen Deaton, RN, West Virginia Medical Institute (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 is correct in its proposal to deny the Claimant's medical eligibility for 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 May 31, 2011
- D-3 Notice of Potential Denial dated June 2, 2011
- D-4 Notice of Decision dated June 24, 2011

Claimants' Exhibits:

- C-1 Prescription Pad Note from Claimant's physician dated June 9, 2011

VII. FINDINGS OF FACT:

- 1) On May 31, 2011, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant to determine his eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. Karen Keaton, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, Ms. Keaton identified the Claimant's functional deficits as vacating a building, eating, and continence.
- 3) On June 2, 2011, the Claimant was issued Exhibit D-3, Notice of Potential Denial. This exhibit documents in pertinent part:

At your request, a WVMI nurse recently visited you and completed an assessment to determine medical necessity for Medicaid's Aged and Disabled Waiver Program.

Medical necessity is based on information you provided to the nurse, which was documented on a form called the Pre-Admission Screening Form or PAS.

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.

Based on your PAS, you have deficiencies in only 3 areas-vacate a building, eating, and continence.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding his medical condition to WVMi within a two week timeframe from the date of the issuance of the notice.

- 4) On June 24, 2011, the Claimant was issued Exhibit D-4, Notice of Denial, informing him that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents in pertinent 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 3 areas-vacate a building, eating, and continence.

- 5) The Claimant contends that additional deficits should have been awarded in the areas of bathing, grooming, and orientation.

The following addresses the contested areas:

Bathing-The Claimant's witness, ----, indicated that the Claimant must hold on to the "shower wand" portion of the bathtub in order to maintain his balance and he is unable to wash any areas below his belt line because the Claimant will become "light headed" and dizzy which results in a fall out of the bathtub when bending over. Ms. Keaton indicated that the Claimant reported a fall out of the shower "a couple of years ago" and further documented her findings of the Claimant's functional ability in bathing as, "procrastinates in taking showers. Will go 5 days without [sic] shower. Has tub with shower and hand held wand. Reports dizzy spells. Fell out of tub a couple years back. Holds onto nipple of wand to prevent falling. Neighbor states he neglects personal care." Ms. Keaton indicated that the Claimant's physician failed to sign the documentation noted in Exhibit C-1 and she phoned his nurse on June 23, 2011. Ms. Keaton documented the nurse's information in the assessment as "no dizziness, no vertigo, no fainting, no motor or sensory disturbances". Ms. Keaton stated that the Claimant reported that he was able to put his shoes on and tie them and this information indicated that the Claimant was able to reach his feet. The Claimant retorted that he must sit on the floor to put his shoes on his feet.

Policy dictates that a deficit is awarded in the area of bathing when the individual requires physical assistance or more to aide in their functional ability. The matter before the Board of Review is whether or not the assessment completed by the assessing nurse in May 2011 was accurate based on information known at the time. There was no information related to the

assessing nurse which indicated the Claimant required physical assistance in the area of bathing; therefore, the assessing nurse correctly assessed the Claimant and an additional deficit in the contested area cannot be awarded.

Grooming-----indicated that the Claimant “shakes really bad” and when he attempts to trim his fingernails or toenails with a pair of clippers or scissor instruments he will cut and injure himself. Ms. Keaton documented that the Claimant reported using a scissor type instrument to trim his finger nails in the assessment and noted, “has dentures, performs own oral care, shakes with manual razor. Trims moustache with beard trimmer. Shakes and cuts self while attempting to cut nails. Uses a scissor like instrument. Hx [history] of ingrown toenail great toe both feet.

Policy dictates that a deficit is awarded in the area of grooming when the individual requires physical assistance or more to aide in their functional ability. Testimony from the Claimant indicated that he injures himself while attempting to trim his fingernails and such statement was supported by the assessing nurse’s documentation in the PAS assessment. Whereas, the Claimant would require physical assistance in this function of grooming to prevent injury an additional deficit can be awarded in the contested area.

Orientation-The Claimant provided Exhibit C-1, Prescription Pad Note from Claimant’s physician, which documents the Claimant’s prescription for Aricept. The physician indicated on the document that the medication was for “preventive medication due to memory loss and history of Alzheimer’s disease in his immediate family.” The Claimant stated that he has an early onset of Alzheimer’s disease and his condition is worsening. Additionally, the Claimant described an incident in which he became disoriented while driving and could not remember his location. Ms. Sara Birckhead, Nurse Monitor-Bureau of Senior Services testified that a deficit is awarded in the area of orientation when the individual is totally disoriented or comatose. Ms. Keaton documented in the PAS assessment the following regarding the Claimant’s orientation, “Alert oriented to person, place, and time, knew month, day and year. Knew current President, cognition slow. Very difficult to keep applicant focused on the purpose of visit.”

Policy requires that a deficit is awarded in the area of orientation when the individual is totally disoriented or comatose meaning the individual is disoriented to person, place, and time. During the assessment the Claimant was alert and oriented to person, place, and time; therefore, the assessing nurse was correct in her assessment of the Claimant’s orientation and an additional deficit in the contested area cannot be awarded.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (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 ADW 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:
(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 in order to be determined eligible for services under the Aged and Disabled Waiver program, an individual must be deficient in at least five health areas on the Pre-Admission Screening assessment (PAS).
- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the areas of vacating a building, eating, and continence.
- 3) Testimony and evidence established an additional deficit in the area of grooming. The Claimant's total number of deficits awarded is four; therefore, the Department was correct in its decision to deny the Claimant's Aged and Disabled Waiver benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to deny the Claimant's medical eligibility for benefits and services 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 September, 2011.

**Eric L. Phillips
State Hearing Officer**