



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

October 13, 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 terminate 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 proposal of the Department to terminate 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 Services
[REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1735

**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 August 2, 2011.

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

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

-----Case Manager [REDACTED]
Sarah Birkhead, Nurse Monitor-Bureau of Senior Services (BoSS)
Betsy Carpenter, 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 terminate 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 July 19, 2011
- D-3 Notice of Decision dated August 3, 2011

VII. FINDINGS OF FACT:

- 1) On July 17, 2011, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant to determine her continued eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. Sarah "Betsy" Carpenter, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, Ms. Carpenter identified the Claimant's functional deficits as bathing, grooming, dressing, and continence.
- 3) On August 3, 2011, the Claimant was issued Exhibit D-3, Notice of Denial, informing her 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 4 areas-bathing, grooming, dressing, and continence.

- 4) The Claimant and her representatives contend that an additional deficit should have been awarded in the area of vacating during an emergency.

The following addresses the contested area:

Vacating During an Emergency-----indicated that she submitted documentation from the Claimant's primary care physician to WVMi which documents that the Claimant experienced urine incontinence and was unable to vacate her home during an emergency due to her lung disease. -----indicated that she received this information from the physician on August 9, 2011 and forwarded the information to WVMi when she upon receipt. Ms. Carpenter indicated that she received the information, but it was marked late as it was received outside of the timeframe established in the Notice of Potential Denial dated on July 20, 2011. As a matter of record, it shall be noted that the Notice of Potential Denial and any documentation provided from the primary care physician concerning the Claimant's functional abilities completed after the assessment date was not submitted into evidence for hearing purposes. -----added that the Claimant suffers from severe chronic obstructive pulmonary disease.

The Claimant testified that she believed that she was able to vacate her residence during the assessment, but indicated that she is not able to open her windows. The Claimant stated that she would not be able to vacate due to her ability to walk. Ms. Carpenter documented in the assessment the following,

“Vacating: with supervision, reports she could vacate her home in the event of an emergency, she states, “I have two emergency buzzers, one in the BR, one in the bedroom? [sic], asked the M [member] if she could vacate her home through a window if necessary, she states ?yes? [sic], upon review, asked the M [member] if she was SOB/DOE if she would be able to vacate her home during an emergency, she states “yes”, “as long as I don't have to lift or carry anything, I can get out of here fast if I would need to.”

Additionally, Ms. Carpenter cited notes regarding the Claimant's ability to ambulate to support her finding regarding the Claimant's ability to vacate. These notes read in pertinent part:

The phone rang during the PAS, the M [member] transferred from a seated position into a standing position quickly on the first attempt without difficulty, she ambulated from the table over to the phone quickly, answering the phone and conversing on the phone, she ambulated carrying and conversing on the phone, back over to the table and transferred back into a seated position in the

chair at the table, she was noted to sit for a few moments with her L foot under her R hip, the she placed her L foot down on the floor beside her R foot. She ambulated quickly and inside her home without difficulty, she transferred inside her home on the first attempt quickly without difficulty.

The Claimant contended that she does not do anything quickly and that she gets around her home “fairly well” and indicated that at the time of the assessment she was able to vacate the residence.

The matter before the Board of Review is whether or not the assessment completed by the assessing nurse in July, 2011 was accurate based on information known at the time. Information related during the assessment from the Claimant indicated that she would be able to vacate her residence during an emergency. The assessing nurse assessed the Claimant’s ability to vacate her home in the event of an emergency with supervision. Policy requires that a deficit is awarded in the contested area when the individual is mentally or physically unable to vacate a building in the event of an emergency. Based on information related during the assessment, the assessing nurse correctly assessed the Claimant’s ability to vacate her home during an emergency and an additional deficit in the contested area cannot be awarded.

5) 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.

6) 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.

7) 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 bathing, grooming, dressing and continence.
- 3) Testimony and evidence presented during the hearing failed to establish an additional functional deficit. The Claimant's total number of deficits awarded is four; therefore, the Department was correct in its decision to terminate 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 terminate 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 October, 2011.

Eric L. Phillips
State Hearing Officer