



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, WV 25313

Earl Ray Tomblin  
Governor

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

November 18, 2011

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Re: -----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 15, 2011. Your hearing request was based on the Department of Health and Human Resources' proposed 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, based on the results of your June 9, 2011 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate your medical eligibility for 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 / WVM

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

**IN RE:**       -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1811**

**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 November 15, 2011.

**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:**

-----, Counsel for Claimant  
-----, Claimant's witness

Kimberly Stitzinger Jones, Counsel for Department  
Kay Ikerd, Department's witness  
Courtenay Smith, Department's witness

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its proposal to terminate the Claimant's medical eligibility for 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 June 9, 2011

**Claimant's Exhibits:**

Vouched Exhibits: V-1 July 19, 2011 letter from Claimant's Physician

V-2 July 11, 2011 letter from ----- to Courtenay Smith

**VII. FINDINGS OF FACT:**

- 1) The Claimant was undergoing an annual reevaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of June 2011.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), Courtenay Smith, completed a medical assessment (D-2) on June 9, 2011, in the Claimant's home and determined that he no longer meets the medical eligibility criteria for the program. The nurse testified that the Claimant received one (1) deficit on the Pre-Admission Screening (PAS) assessment, and the Department stipulated that the Claimant established the one (1) deficit in the area of vacating a building during an emergency. Ms. Smith also stated that she mistakenly entered the date of the Pre-Admission Screening assessment form as May 9, 2011, and that the correct date of the assessment is June 9, 2011.

Those present during the nurse's PAS assessment interview included the Claimant, his two sons, his daughter-in-law, his homemaker, and his homemaker registered nurse.

- 3) The Claimant contends that he also meets the requirements to be assessed deficits in the areas of eating, bathing, dressing, grooming, continence, and medication administration. The Claimant contends that the nurse reached different conclusions based on similar findings when comparing her functional ability findings made during her 2010 PAS assessment interview and her 2011 PAS assessment interview, which caused her to find the Claimant not eligible for certain deficits during the 2011 assessment.
- 4) The Claimant also contends that the Department erred in not interviewing the Claimant's physician as part of the assessment process, and bases this claim on the fact that on June 9, 2011, the Claimant signed a West Virginia Medicaid Aged and Disabled Waiver Program Informed Consent and Release of Medical Information form, thereby acknowledging his understanding that the Department and/or contracted entities through the Bureau for Medical Services would interview his physician or physicians as part of the assessment process. There is no policy cited that supports this requirement.
- 5) The Department objected to the discussion of the 2010 PAS assessment because the nurse did not have access to the information contained therein during her 2011 PAS assessment interview. The objection was overruled, and discussion of the 2010 PAS assessment was limited to whether it will show that the nurse came to different conclusions in 2011 based on similar findings during 2010.
- 6) 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.

- 7) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 states in pertinent part:

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 (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.

- 9) In the functional area of eating, the Department assessed the Claimant as being able to perform this function without physical assistance. The WVMi nurse recorded the following relevant information on the 2011 PAS assessment form:

Member feeds himself but states he can cut and peel his own foods. He also states he can cook for himself without assistance. His [homemaker] states he forgets pans on the stove turned on but he disputes this. The issue of whether he can cook or not has no bearing on his ability to cut, peel, and feed himself which he does without assistance.

Ms. Smith testified that she conducted a mini-assessment during her evaluation and determined that the Claimant's hand-grips were "moderate" bilaterally. She stated that she gauges the strength of individuals by having them grip her hands, and then by rating their ability to grip as weak, moderate, or strong.

Ms. Smith stated that the 2010 PAS indicated that the Claimant needed physical assistance with eating due to weakness and poor hand grips based on a physical assessment conducted by her on that date. She indicated that she made this finding because the Claimant told her he was weak and because she determined his hand-grips were weak bilaterally. She stated that her findings during the 2011 PAS assessment show that the Claimant's grips were "moderate" and stronger, and that the Claimant told her he could cut and peel his foods. The nurses 2010 and 2011 findings in comparison of the Claimant's functional ability to eat are not similar, and do not show that she reached different conclusions based on similar functional ability findings.

- 10) In the area of bathing, the Claimant was rated as able to perform this function without assistance or with prompting. The WVMI nurse recorded the following relevant information on the 2011 PAS assessment form:

Member showers standing up in the shower. He states he can get in and out of the shower himself. He can wash his back, lower legs, and feet without assistance.

Mini-assessment: member raised his arms above his head and touched the back of his head. He reached around to his back at the waist. His grip was moderate bilaterally. He raised and extended both legs and crossed them over one another at the knee while seated. He also bent over and touched his feet while seated. Member transferred out of the chair by pushing up on the arms and walked through the home holding onto the wall momentarily to get his balance.

Ms. Smith stated that the 2010 PAS indicated that the Claimant needed physical assistance with bathing because the Claimant told her he needed assistance to transfer to the shower, and that he needed assistance with washing his back, legs and feet. She stated that her findings in this area during her 2011 PAS assessment showed that he needed no physical assistance because he told her that he could get in and out of the shower by himself, and that he could wash his back and lower legs without assistance. She also stated that he no longer was using a shower chair which was indicated during the 2010 PAS assessment. The nurses 2010 and 2011 findings in comparison of the Claimant's functional ability to bathe are not similar, and do not show that she reached different conclusions based on similar functional ability findings.

- 11) In the functional area of dressing, the Claimant was rated as being able to perform this function without assistance or with prompting. The WVMI nurse recorded the following relevant information on the 2011 PAS assessment:

Member dresses himself. He can put on his shirt and pants. He can button, zip, and tie his clothing. He can put on his socks and shoes. He demonstrated that he could cross his foot over his knee and put on his socks and shoes without assistance. He states he also cuts his toenails in this manner.

Ms. Smith stated that the 2010 PAS indicated that the Claimant needed physical assistance with dressing because he was found to have difficulty putting his socks and shoes on without assistance. She stated that she documented at that time that he raised and extended both legs and crossed at the knee, and that he had difficulty bending over and touching his feet while seated in order to put on his socks and shoes. She stated that her findings in this area during her 2011 PAS assessment showed that the Claimant raised and extended both legs and crossed them over one another at the knee while seated, and that he also bent over and touched his feet while seated; he is also documented as reporting that he could dress himself, including putting on his socks and shoes unassisted. The nurses 2010 and 2011 findings in comparison of the Claimant's functional ability to dress are not similar, and do not show that she reached different conclusions based on similar functional ability findings.

- 12) When asked about diabetic neuropathy, Ms. Smith stated that she had no information during the 2011 PAS assessment which showed that the Claimant has diabetic neuropathy. She acknowledged that the Claimant is diagnosed with diabetes, but stated that this is not enough by itself to indicate neuropathy.
- 13) The Claimant purports that a letter (V-1) submitted to the Department by the Claimant's physician on or about July 19, 2011, provides a diagnosis of diabetic neuropathy, and that because the Department erred in not interviewing the physician as a part of the assessment process, the document should be considered as evidence during the hearing. The Claimant also requested that a letter (V-2) dated July 11, 2011, from ----- to Ms. Smith, be considered as evidence. Both documents were submitted to the Department after the deadline for submission of information and were not reviewed by Ms. Smith. The Department objected to the documents being considered, and stated that Ms. Smith contacted the doctor by letter in order to clarify certain reported diagnoses prior to the Department's decision to terminate the Claimant's medical eligibility. The Department's objection was sustained, and the documents will not be considered because they were not available to the Department during the assessment phase and were provided after the Department issued its decision. The Claimant moved that the documents be vouched with the record, and it was so ordered.
- 14) In the functional area of grooming, the Claimant was rated as being able to perform this function without assistance or with prompting. The WVMI nurse recorded the following relevant information on the 2011 PAS:

Member shampoos his own hair and shaves himself. He has dentures and cannot wear them. He does his own mouth care. He clips his fingernails and toenails and showed me a pair of toenail scissors that he used to cut his toenails.

Ms. Smith stated that the 2010 PAS indicated that the Claimant needed physical assistance with grooming because the Claimant reported at that time that his granddaughter clipped his toenails. She stated that her findings in this area during her 2011 PAS assessment showed that the Claimant reported that he clips his own nails. The nurses findings during the 2010 and 2011 PAS assessments in this area are not similar, and do not show that the nurse reached different conclusions based on similar findings.

- 15) In the area of continence, the Claimant was rated as being continent. The WVMI nurse recorded the following relevant information on the 2011 PAS:

Member denies any episodes of bladder incontinence since having his urethral dilation. He states he used to have frequent urine leakage but this stopped shortly after the procedure and he has not had any incontinence for over 2 months. He denies any episodes of bowel incontinence.

In regard to continence, Ms. Smith stated that the Claimant reported that he was continent during the 2011 PAS assessment, and that he had not been incontinent for over 2 months.

When asked about the Claimant's orientation during the assessment, MS. Smith stated that although she determined that the Claimant was intermittently disoriented at times when his blood sugar levels would drop or spike, he was found to be oriented on the date of the assessment and she had no reason to believe he would give incorrect information. The Claimant did not refer to the 2010 PAS assessment during discussion in this area.

- 16) In regard to medication administration, Ms. Smith testified that the Claimant reported that he is able to take his medications with prompting and supervision. She stated that he reported that his homemaker reminds him to take his medication, and that someone sets the medications up for him in a pill planner.
- 17) Ms. Smith stated that the 2010 PAS showed that the Claimant had been hospitalized 1 month prior to the PAS assessment for sepsis which could explain some of his issues with weakness at that time.
- 18) The Claimant's Case Manager, -----, stated that she visits the Claimant on a monthly basis and that she visited him 3 times during June 2011. She added that she met with him and his son, [REDACTED] on June 29, 2011, and discussed the 2011 PAS findings. She added that the Claimant has difficulty hearing, and that she found when she asked him the same question several different ways he would respond with different answers. She attributed this to his hearing difficulty. She stated that the Claimant was not able to bend over to show her how he cut his toenails, and that he could not put on his socks and shoes.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment to qualify medically for the Aged/Disabled Waiver (ADW) Program.
- 2) The Claimant received one (1) deficit during the June 2011 PAS assessment, in the area of vacating a building during an emergency. He needs four (4) additional deficits to be medically



eligible for the program. The Claimant contested the ratings he received in the areas of eating, bathing, dressing, grooming, continence, and medication administration.

- 3) To receive a deficit for eating, policy requires that an individual must show evidence of needing physical assistance to get nourishment, not preparation. The evidence does not support that the Claimant requires physical assistance to eat. The Claimant reported during the assessment that he cuts and peels his own foods, and that he feeds himself. The WVMI nurse also stated that the Claimant's hand-grips were moderately strong, which is consistent with the Claimant's statements. There is insufficient evidence to show that this area was rated incorrectly.
- 4) To receive a deficit for bathing, policy requires that an individual show that he or she requires physical assistance to bathe. The totality of the evidence does not support that the Claimant requires physical assistance to bathe. The Claimant reported during the PAS assessment that he could stand up in the shower unassisted, that he could get in and out of the shower by himself, and that he can wash his back, lower legs, and feet, without assistance. The results of the nurse's mini-assessment conducted on that date show his strength and range of motion were adequate and substantiate his claim that he is able to bathe unassisted.
- 5) To receive a deficit for dressing, policy requires that an individual show that he or she requires physical assistance to dress. The totality of the evidence does not support that the Claimant requires physical assistance to dress. The Case Manager stated that the Claimant could not put on his socks and shoes unassisted during a June 29, 2011 visit; however, the Claimant reported during the PAS assessment that he dresses himself without assistance; that he can button, zip, and tie his clothing; and that he can put on his socks and shoes. The Claimant also demonstrated that he could cross his foot over his knee and put his socks and shoes on without assistance. The Claimant provided no testimony during the hearing.
- 6) To receive a deficit for grooming, policy requires that an individual show that he or she requires physical assistance to groom themselves. The totality of the evidence supports that the Claimant does not need physical assistance for grooming. The Case Manager stated that he required assistance with cutting toenails; however, he stated during the PAS assessment that he shampoos his hair and shaves unassisted; that he does his own mouth care; and that he clips his fingernails and toenails.
- 7) To receive a deficit for continence, policy requires that an individual show that he or she is totally incontinent of either bowels or bladder. The totality of the evidence supports that the Claimant does not have incontinence.
- 8) To receive a deficit for medication administration, policy requires that an individual must be unable to administer his or her own medications. The totality of the evidence shows the Claimant is administering his own medications. He reported that someone sets up his medication in a pill planner, and that someone reminds him to take the medication. Although there is some evidence that the Claimant is sometimes disoriented when his blood sugar level spikes or drops, there is no evidence that this would render him unable to take his medication after being reminded.
- 9) The Claimant's contention that the nurse arrived at different conclusions based on similar findings during her 2010 and 2011 PAS assessments has not been shown by the evidence.

- 10) As a result of the above conclusions, the Claimant has not established the required five (5) deficits in order to establish medical eligibility for the Aged/Disabled Waiver program.
- 11) The Department was correct in its decision to deny medical eligibility in the Aged/Disabled Waiver program based on the results of the June 2011 PAS.

**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 18<sup>th</sup> Day of November, 2011.**

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**Cheryl Henson  
State Hearing Officer**