



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 26, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 19, 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 action 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

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1895

**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 31, 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

-----, Claimant's representative

Sarah Birkhead, Nurse Monitor, Bureau of Senior Services (BoSS)

Debbie Sickles, 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 August 16, 2011
- D-3 Notice of Potential Denial dated August 17, 2011
- D-4 Notice of Decision dated September 1, 2011

Claimants' Exhibits:

- C-1 Various Medical Records for Claimant
- C-2 Grievance Request

VII. FINDINGS OF FACT:

- 1) On August 16, 2011, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant to determine his continued eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. Debbie Sickles, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, Ms. Carpenter identified the Claimant's functional deficits as vacating a building, bathing, grooming, and dressing.
- 3) On August 17, 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 4 areas-vacate a building, bathing, grooming, and dressing.

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

- 4) On September 1, 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 4 areas-vacating a building, bathing, grooming, and dressing.

- 5) The Claimant and his representative contend that additional deficits should have been awarded in the areas of continence, eating, and transferring. ----- provided testimony which revealed the Claimant's most recent diagnosis of small cell lung cancer and his requirement for continuous oxygen. -----provided Exhibit C-1, Various Medical Records, which indicate that the Claimant's diagnosis was obtained after the completed assessment and indicated a need for his continued care. The matter before the Board of Review is to determine whether or not the assessing nurse accurately assessed the Claimant based on the information provided at the August, 2011 assessment. The recently diagnosed conditions were not present at the time of the assessment; therefore, the diagnosis of small cell lung cancer and the Claimant's requirement for continuous oxygen cannot be considered in the State Hearing Officer's decision.

The following addresses the contested areas:

Continence- -----, Claimant's representative, testified that the Claimant is a very proud person who finds it difficult to talk about his problems and indicated that the Claimant has difficulties addressing his problems with his physicians. -----explained that Ms. Sickles was a new nurse to the Claimant and he found it hard to talk about his issues. Testimony indicated that the

Claimant has bladder incontinence problems in which the Claimant assumes he is finished urinating, but will soil his clothing and requires changing. Ms. Sickles documented in the assessment that the Claimant reported monthly bowel incontinence and one episode of bladder incontinence per week.

Policy requires that a deficit is awarded in the area of incontinence when the individual is assessed as a Level 3 or higher, meaning that the individual experiences three or more weekly episodes of incontinence or is determined to be totally incontinent. While information related during the assessment indicates that the Claimant experiences occasional incontinence, the Claimant's representative maintains the Claimant provided inaccurate information at the assessment, due to his own embarrassment. Based on the information related during the assessment, the assessing nurse correctly assessed the Claimant's continence and an additional deficit in the contested area cannot be awarded.

Eating-----provided testimony which indicated that she prepares meals and cuts up meats for the Claimant. Ms. Sickles documented in the assessment that the Claimant reported an ability to feed himself and cut up meats and tough foods.

Policy requires that a deficit is awarded in the contested area when the individual requires physical assistance to get nourishment and preparation is not included in the assessment of a deficit. Information related during the assessment indicated that the Claimant was able to feed himself and cut up tough meats or foods; therefore, the assessing nurse correctly assessed the Claimant's functional ability in eating and an additional deficit in the contested area cannot be awarded.

Transferring-----indicated that she provides assistance to the Claimant to transfer in and out of the bathtub and that the Claimant failed to report this at the assessment due to his embarrassment. Ms. Sickles documented in the assessment that the Claimant was able to transfer in and out of chair by utilizing a table top for assistance and was able to transfer on and off the toilet with the aid of a "grab bar on the tub."

Policy requires that a deficit is awarded in the area of transferring when the individual requires one or two person assistance to aid in their functional ability. The assessing nurse observed the Claimant's ability to transfer and no information was related during the assessment that revealed the Claimant's requirement for physical assistance in the contested area. Based on information related during the assessment, the assessing nurse correctly assessed the Claimant 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, bathing, grooming, and dressing.
- 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**