



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

December 6, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 1, 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
[REDACTED] Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2171

**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 September 22, 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
-----, Attorney-In-Fact
-----, RN, Pendleton County Senior and Family Services
Kay Ikerd, RN, Bureau of Senior Services (BoSS)
Barbara Plum, RN, West Virginia Medical Institute

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 August 15, 2011
- D-3 Notice of Potential Denial dated August 23, 2011
- D-4 Letter from Dewey Bensenhaver, M.D. dated September 7, 2011
- D-5 Letter from -----, R.N.
- D-6 Notice of Decision dated September 8, 2011

VII. FINDINGS OF FACT:

- 1) On August 15, 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. Barbara Plum, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, Ms. Plum identified the Claimant's functional deficits as vacating a building, eating, and grooming.
- 3) On August 23, 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 grooming.

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 September 7, 2011, the Claimant's physician, [REDACTED] submitted a letter to WVMi (Exhibit D-4) for consideration of the Claimant's medical eligibility for the program. This letter documents in pertinent part the following:

----- has been a patient of mine since 1990. He is a 73 year-old white male that is blind. I feel he needs help with dressing, walking and administering medications. These deficiencies are in addition to eating, grooming and vacating a building.

- 5) On September 8, 2011, the Claimant was issued Exhibit D-6, 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 grooming.

- 6) The Claimant's representatives contend that additional deficits should have been awarded in the areas of bathing, dressing, walking, and medication administration.

The following addresses the contested areas:

Bathing- -----, RN, [REDACTED] Services testified that the Claimant is completely blind and requires "stand-by assistance" for his safety and well-being in order to prevent falling while showering. ----- documented her concerns involving the Claimant's ability to bathe in Exhibit D-5 and submitted the information to WVMi for further review. This exhibit documents the Claimant's difficulties in the area of bathing as, "Client also needs assist [sic] in and out of the shower for his safety. The caregiver also must assist with shaving because he is blind and misses spots that need to be shaved by caregiver. He also wets the floor when urinating and the caregiver must clean the bathroom after he uses it, again this is r/t [sic] his blind condition and not being able to see what he is doing. Ms. Plum stated that a deficit could not be awarded in the contested area when the individual only requires monitoring. Ms. Plum documented her findings in the PAS assessment as, "Walk in shower, stand to shower, no

grab bars. Applicant reports he can get self in and out of the shower. Applicant reports he can do all of his bath and per sister, demonstrated he could reach around and wash his back and reach feet.”

Policy requires that a deficit is awarded in the area of bathing when the individual is assessed at a Level 2 or higher meaning that the individual requires physical assistance or more in the life area. Testimony revealed that the Claimant must be monitored and there was no testimony provided to indicate that the Claimant required physical assistance to aide in his ability to bathe; therefore, an additional deficit could not be awarded in the contested area.

Dressing----- indicated that the Claimant requires assistance with buttons and clothing to ensure he is dressed appropriately for the weather. Ms. Plum stated that during the assessment there was no indication that the Claimant required physical assistance with dressing and she could not award a deficit in the life area. Ms. Plum documented her findings in the PAS assessment as, “Sister reports she gets clothes out for him. Applicant can get on his shirts, can get on pants, socks and shoes, velcro shoes, sister reports he needs help with colors and appropriate clothing.”

Policy requires that a deficit is awarded in the area of dressing when the individual is assessed at a Level 2 or higher meaning that the individual requires physical assistance or more in the life area. The matter before the Board of Review is whether or not the assessing nurse correctly assessed the Claimant’s abilities based on information known at the time of the assessment. Evidence reveals that the Claimant was able to dress himself and required assistance with colors and appropriate clothing. There was no indication during the assessment that the Claimant was physically unable to participate with dressing; therefore, the assessing nurse was correct in her assessment of the Claimant’s ability to dress himself and an additional deficit cannot be awarded in the contested area.

Walking-Testimony indicated that the Claimant participates in leisure activities, such as listening to music, in a building on the outside of his home. ----- stated that the Claimant walks to this building and requires that the path be free of debris and that the Claimant requires supervision to ensure he does not wander from the designated path. ----- further addressed the Claimant’s walking issues in Exhibit D-5 which documents, “He [Claimant] likes to go outside to a [sic] outbuilding where he likes to listen to music and spend time by himself. The caregiver must first make sure his path is clear and he must be watched in case he wanders off the path. He lives in a very rural mountainous area and could become lost very easily if not supervised.” Ms. Plum stated that the Claimant could walk without difficulty during the assessment and she could not assess his ability to walk outside the home. Ms. Plum documented the Claimant abilities in the PAS assessment as, “Applicant feels way thru [sic] house, no falls in the home. Applicant walked in the home with steady gait.”

Policy requires that a deficit is awarded in the area of walking when the individual is assessed as a Level 3 or higher meaning that the individual requires one-person assistance in the home. Testimony revealed that the Claimant could ambulate without assistance and required supervision when he walked outside to participate in leisure activities. Testimony failed to

indicate that the Claimant required physical assistance to aide in his ability to ambulate; therefore, and additional deficit in the contested area cannot be awarded.

Medication Administration----- indicated that the Claimant can obtain his own medication, but requires supervision to ensure he is taking the correct medication due to his blindness. Ms. Plum stated that a deficit is awarded in the area of medication administration when the individual requires assistance to “put medications in their mouth or administer eye drops. Ms. Plum documented her findings in the assessment as, “Applicant reports he can put in eye drops, puts medications in a bottle daily by applicant, sister agrees that he handles his own medications.

Policy requires that a deficit is awarded in the contested area when the individual is not capable of administering his own medications. Testimony indicated that the Claimant required supervision when administering his medication and failed to demonstrate that the Claimant was incapable of administering his medication; therefore, an additional deficit in the contested area cannot be awarded.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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.

8) 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.

9) 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 eating, grooming, and vacating a building.
- 3) Testimony and evidence presented during the hearing failed to establish an additional functional deficit. The Claimant's total number of deficits awarded is three; therefore, the Department was correct in its decision to deny the Claimant's application 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 December, 2011.

**Eric L. Phillips
State Hearing Officer**