



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26555

Earl Ray Tomblin
Governor

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

January 18, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 14, 2011. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through 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 that 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 the hearing fails to demonstrate that you require a sufficient number of services and the degree of care to medically qualify for participation in the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your application for benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI

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

-----,

Claimant,

v.

Action Number: 10-BOR-2270

**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 January 14, 2011 on a timely appeal filed November 9, 2010.

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:

-----, Claimant

-----, LSW, [REDACTED] Claimant's witness

Kay Ikerd, RN, Bureau of Senior Services (BoSS)

Debra Lemasters, RN, West Virginia Medical Institute (WVMI), Respondent's witness

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

All parties participated via telephone conference call.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its action to deny the Claimant's application for benefits and services through the Medicaid Aged/Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 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 on October 8, 2010
- D-3 Notice of Potential Denial dated October 11, 2010
- D-4 Notice of Termination/Denial dated October 27, 2010

VII. FINDINGS OF FACT:

- 1) On October 8, 2010, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged/Disabled Waiver Services Program, hereinafter ADW Program (Exhibit D-2, Pre-Admission Screening (PAS) form).
- 2) On or about October 11, 2010 the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

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, Chapter 501.3.2.

Based on your PAS you have deficiencies in only 3 areas – Vacating a Building, Bathing and Grooming.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated October 27, 2010 (Exhibit D-4). This notice states, 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 a 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 – Vacating a Building, Bathing and Grooming.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates three (3) deficits but indicated the medical assessment completed in October 2010 fails to identify five (5) functional deficits as required by ADW Program medical eligibility policy.
- 5) The Claimant contends that he should have been found medically eligible as she is also demonstrating a functional deficit in **dressing** and **incontinence** (bladder).

Dressing – The Claimant contends that she requires physical assistance with dressing because she is unable to maintain her balance when dressing. She acknowledged that she can sit and get dressed but she must lean against the wall when she rises to keep her balance. She testified that she could not recall whether she told RN Debra Lemasters about her balance problems when getting dressed. According to Exhibit D-2 (pages 7 and 8), the Claimant reported on the day of the assessment that she dressed herself that day, and that she dresses herself daily. RN Debra Lemasters reviewed her findings specific to range of motion and testified there were no physical findings, including balance issues, which limited the Claimant’s ability to dress independently. Based on the evidence, the Claimant did not require hands-on physical assistance to get dressed at the time of the assessment.

Incontinence – The Claimant testified that she did not report being incontinent of bladder at the time of the assessment because she did not have any incontinence supplies. ----- testified that while bladder incontinence was documented in nursing notes kept by Visiting Homemaker Services, she could not testify how frequently episodes of incontinence occurred as incontinence is not addressed in the Claimant’s Plan of Care. The evidence reveals that the Claimant reported episodes of incontinence to RN Debra Lemasters but indicated the incidents did not occur every week. Documentation found in Exhibit D-2 further reveals that a diagnosis of bladder incontinence was not provided by the Claimant’s physician, she was not taking any medications to treat bladder incontinence, and she was not using incontinent supplies at the time of the assessment. The Medicaid Provider Manual, Chapter 501, Attachment 14, indicates a deficit is established if the individual is incontinent of bladder or bowel three (3) or more times per week. Because there is insufficient evidence to confirm bladder incontinence occurred three or more times per week, a deficit cannot be awarded.

6) 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.

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 A/DW 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 B
(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) Medicaid policy requires that an individual must demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. This is the same level of care required to qualify medically for nursing home services.
- 2) The evidence reveals that the Claimant was awarded three (3) deficits on a PAS completed by WVMI in October 2010 – Vacating a Building, Bathing and Grooming.
- 3) The evidence submitted at the hearing fails to confirm that the Claimant was demonstrating any additional deficits when the assessment was completed.
- 4) Whereas the Claimant demonstrated only three (3) program qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

X. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Claimant's application for benefits and services through the Medicaid, 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 _____ Day of January, 2011.

**Thomas E. Arnett
State Hearing Officer
Member, State Board of Review**