



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

April 6, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 1, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal 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 under the Aged and Disabled Waiver program.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, BoSS
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 10-BOR-2426

**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 April 1, 2011 on a timely appeal, filed November 9, 2010.

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.

This hearing was originally scheduled for February 1, 2011 and was continued on the Claimant's request based on the unavailability of his representative/witness. The hearing was rescheduled for February 24, 2011 and was continued due to the Claimant's hospitalization.

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

-----, Claimant's representative

-----, Claimant's witness

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

Lee Ann Beihl, 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 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 completed October 20, 2010

D-3 Notice of Potential Denial dated October 28, 2010

D-4 Notice of Denial dated November 15, 2010

VII. FINDINGS OF FACT:

- 1) On October 20, 2010, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for his continued eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. Lee Ann Beihl, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, Ms. Beihl identified a functional deficit of grooming for the Claimant.
- 3) On October 28, 2010, 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 & 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. A copy of your PAS is enclosed.

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 1 area-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 November 15, 2010, the Claimant was issued Exhibit D-4, Notice of Denial, informing him that medical eligibility could not be established and the required amounts of deficits could not be awarded on the PAS assessment. This notice documents in pertinent part:

You 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 1 area-Grooming.

- 5) As a matter of record, Ms. Beihl conceded deficits toward the Claimant's medical eligibility in the areas of vacating during an emergency, bathing, and dressing citing clerical error in the PAS assessment. The Claimant was awarded a total of four functional deficits.
- 6) The Claimant, along with his representatives, contended that additional deficits should have been awarded in the areas of orientation, walking, transferring, and medication administration.

The following addresses the contested areas:

Orientation-Ms. -----, the Claimant's representative questioned the WVMi nurse's documentation in the PAS assessment regarding the Claimant's orientation. Exhibit D-2 documents the Claimant's orientation as, "A&O [alert and oriented] at time of my visit; did not know year/month; states he becomes confused during the day and evening." The Claimant received a rating of a Level 2 Intermittent Disorientation as part of the assessment. Ms. Kay

Ikerd, RN, Bureau for Senior Services (BoSS) testified that in order to qualify for a deficit in the area of orientation, the individual must be disoriented to person, place, or time or the individual must be comatose. The Claimant stated that he did not know the date when asked at the assessment and was confused for the remainder of the assessment.

Testimony indicated that the Claimant was assessed as a Level 2 Intermittent Disorientation based on his confusion concerning the date and time. To qualify for a deficit in the contested area, the individual must be comatose or totally disoriented to person, place, or time. During the assessment, the Claimant was oriented to person and place, but had difficulties with time. Therefore, the Claimant was correctly assessed as intermittently disoriented and an additional deficit **cannot** be awarded in the contested area.

Walking----- questioned the PAS assessment regarding the Claimant's ability to walk. Exhibit D-2 documents the Claimant's walking abilities as, "demonstrated walking with unsteady gait; poor balance; shuffles feet." The Claimant received a rating of Level 2 Supervised Assistive Device, as part of the assessment. Ms. Beihl testified that a Level 3 in the contested area must be achieved in order to receive a deficit in the area. Ms. Ikerd defined a Level 3 rating as requiring hands on physical assistance from another person to aid in the area. Ms. Beihl testified that she believed that the Claimant could ambulate "okay" in his surroundings and there was no indication that the Claimant was unsafe when ambulating. The Claimant's witness, Ms. -----, indicated that the Claimant utilizes a wheel chair in his home.

Documentation indicates that the Claimant demonstrated his walking abilities, with difficulty, on the day of the assessment. Testimony failed to establish that the Claimant required physical assistance in the contested area; therefore, the Claimant was correctly assessed as a Level 2, Supervised Assistive Device and an additional deficit **cannot** be awarded.

Transferring-Exhibit D-2 documents the Claimant's ability to transfer as, "transfers with assistance of furniture/safety bars; demonstrated getting out of bed; poor balance." The Claimant was rated as a Level 2 Supervised Assistive device. Ms. Ikerd indicated that the same criteria for walking are required for the area of transferring, in which the individual must require hands on physical assistance from another person to aid in the area. ----- contended that if the individual is alone and requires assistance from furniture for safety, the individual should meet the criteria. Ms. Beihl indicated that when the Claimant transferred out of bed, he utilized furniture and safety bars. Ms. Beihl stated that the Claimant's health aide was present at the assessment and offered assistance, but the Claimant declined. The Claimant stated that he attempted to transfer and was unable to move and his health aide provided him with assistance. The Claimant indicated that he was in pain and could not move on the day of the assessment and had to complete the assessment from his bed.

Testimony presented from the Department indicated that the Claimant demonstrated transferring with difficulty and assistive devices during the assessment. At the hearing, the Claimant purported that he was unable to transfer without assistance at the assessment. Assuming that the Claimant could not transfer on the day of the assessment, additional testimony failed to establish that the Claimant experiences difficulties in the contested area on a consistent basis during the timeframe in which the assessment was completed. At the time of assessment, the assessing nurse observed the Claimant's ability to transfer with the aid of an assistive device and made an informed assessment of the Claimant's abilities; therefore, the

Claimant was correctly assessed at a Level 2, Supervised Assistive Device and an additional deficit in the contested area **cannot** be awarded.

Medication Administration-The PAS assessment (Exhibit D-2) documents in regards to the Claimant's medication administration, "medications are set up weekly by the nurse in his MD office; he is unable to read and does not know which medicines to take; requires assistance, prompting and supervision." Ms. Ikerd stated that reminding and setting up medications are considered prompting and supervision and deficits are awarded in the area when the individual is unable to place the medications in their own mouth and swallow the medication. -----, the Claimant's witness indicated that she has previously set up the Claimant's medications to prevent him from taking the wrong medications. The Claimant testified that he cannot read or write and fill his pillbox up with his medications and is unfamiliar with his medications.

Testimony revealed that the Claimant was assessed as requiring prompting and supervision regarding medication administration and failed to establish that the Claimant could not administer his own medication. Therefore, an additional deficit in the contested area **cannot** be awarded.

7) 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.

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 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.

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 (5) health areas on the Pre-Admission Screening assessment (PAS).
- 2) Evidence presented during the hearing revealed that the Claimant was previously awarded a deficit in the area of grooming. The Department stipulated additional deficits in the areas of vacating during an emergency, bathing, and dressing. Total deficits awarded to the Claimant were four.
- 3) Testimony and evidence presented during the hearing process failed to establish additional deficits.
- 4) The Claimant's total number of deficits remains at four; therefore, the Department was correct in its decision to terminate the Claimant's benefits and services under the Aged and Disabled Waiver program.

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 April, 2011.

**Eric L. Phillips
State Hearing Officer**