



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

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

March 30, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 16, 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 Hearings Officer to Uphold the proposal of the Department to terminate your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric Phillips
State Hearings Officer
Member, State Board of Review

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

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

-----,

Claimant,

v. **Action Number: 11-BOR-437**

**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 March 16, 2011 on a timely appeal, filed December 15, 2010.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program, hereinafter ADW, continue at the previous level of determination pending a decision from the State Hearing Officer.

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 and wife
- , 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 dated November 18, 2010
- D-3 Notice of Potential Denial dated November 22, 2010
- D-4 Letter from [REDACTED] M.D. dated December 22, 2010
- D-5 Notice of Decision dated December 10, 2010

VII. FINDINGS OF FACT:

- 1) On November 18, 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 and his wife. During the assessment, Ms. Beihl identified the Claimant's functional deficits as eating, grooming, and dressing.
- 3) On November 22, 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 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 or 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-eating, grooming, dressing.

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 December 22, 2010, Exhibit D-4, Letter from [REDACTED] M.D. was submitted to WVMi for consideration of additional medical information. This information was received outside the documented timeframe and documents in pertinent part:

Because of his CVA with right hemiplegia, he has daily dizziness, headaches and fits of anger. He has improved greatly but still needs continual therapy. He still can't dress himself completely along with bathing issues. He has recent falls, fluctuating blood pressure and has trouble seeing from his affected eye from the stroke. He now has developed ulcers and stasis dermatitis.

Ms. Beihl testified that she did not receive this letter for her consideration of the Claimant's medical eligibility for the ADW program.

- 5) On December 10, 2010, the Claimant was issued Exhibit D-5, Notice of Decision, 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-eating, grooming, and dressing.

- 6) The Claimant, along with his representatives, contends that additional deficits should have been awarded in the areas of vacating during an emergency, medication administration, transferring, and bathing.

The following addresses the contested areas:

Transferring-----, the Claimant's wife testified that the Claimant could get up and out of a chair, but all rugs and objects on the floor need to be removed in order to prevent the Claimant from tripping and falling. Ms. Beihl documented in the PAS assessment (Exhibit D-2), that the Claimant demonstrated transferring using a cane and furniture support and indicated that the Claimant experienced balance issues during the assessment. Ms. Beihl testified that the Claimant did not require physical assistance in transferring during the assessment.

Testimony failed to establish that the Claimant required physical assistance in order to transfer in his surroundings. The nurse's assessment of a Level II Supervised/Assistive device is affirmed and an additional deficit in the contested area **cannot** be awarded.

Medication Administration-----testified that the Claimant has difficulties remembering the names and types of his prescribed medications and the exact time in which he is to take the medications. Testimony from the Claimant and his representatives indicated that the Claimant administers his medications with supervision. Ms. Beihl documented in the PAS assessment that the all of the Claimant's medications are prompted, supervised and administered by family and that the Claimant is able to put them in his mouth.

Testimony indicated that the Claimant was able to administer his own medications with prompting and supervision from others. Testimony failed to establish that the Claimant was incapable of administering his own medications; therefore, an additional deficit in the contested area **cannot** be awarded.

Vacating During an Emergency-----purported that the Claimant's residence has a steep stair way at the side and an accessible ramp to the front entrance of the home. The Claimant testified that he requires assistance to get out of the front entrance to the home, but he can walk down the ramp at the entrance of the residence. -----indicated that the Claimant would have difficulty vacating his home during an emergency, if he was alone, and could only vacate through a familiar exit. Ms. Beihl documented in the PAS assessment that the Claimant reported he was able to vacate independently by using the ramp in front of house.

Testimony indicated that the Claimant is able to vacate independently, with supervision, when exiting his home by utilizing an accessible ramp. Testimony failed to establish that the Claimant was mentally or physically unable to vacate the premises; therefore, an additional deficit in the contested area **cannot** be awarded.

Bathing-Testimony indicated that the Claimant has a walk-in shower with assistive bars, a bathing chair, and other assistive devices to aid the Claimant in the functional area of bathing. -----indicated the Claimant requires assistance preparing to bathe and family members are nearby the bathroom if the Claimant needs assistance with safety, but indicated that the Claimant does not require assistance in bathing himself. Ms. Beihl documented in the PAS assessment that the Claimant was able to bathe independently and uses adaptive devices for assistance.

The Claimant was rated as Level 1 Self/Prompting. Testimony failed to establish that the Claimant required physical assistance in the contested area; therefore, an additional deficit in the contested area **cannot** be awarded.

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.
- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the areas of eating, grooming, and dressing.
- 3) Evidence presented during the hearing failed to establish additional functional deficits. The Claimant's total number of deficits awarded is three; 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 March, 2011.

**Eric L. Phillips
State Hearing Officer**