



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Earl Ray Tomblin  
Governor

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

April 7, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held on April 7, 2011. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid Aged and Disabled Waiver (ADW) Program services based on a finding of medical ineligibility.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2).

The information submitted at your hearing revealed that the Department was correct in its assessment of three deficits and medical ineligibility for the ADW program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny benefits under the ADW Program.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Kay Ikerd, Department Representative  
Kim Sang, West Virginia Medical Institute

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

-----,

**Claimant,**

v.

**Action Number: 11-BOR-583**

**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 concluded on April 7, 2011, 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 7, 2011, on a timely appeal, filed January 25, 2011.

All persons offering testimony were placed under oath.

**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  
Kay Ikerd, Department representative  
Kim Sang, Department witness

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its decision to deny Aged and Disabled Waiver Program services to the Claimant based on a finding of medical ineligibility.

**V. APPLICABLE POLICY:**

Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3 – 501.3.2

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1** Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3 – 501.3.2
- D-2** Pre-Admission Screening (PAS) form, dated November 9, 2010
- D-3** Notice of potential denial, dated November 10, 2010
- D-4** Letter from [REDACTED] DO, dated November 22, 2010
- D-5** Notice of denial, dated December 3, 2010
- D-6** Hearing Request

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a 68-year-old female applicant for Aged and Disabled Waiver (ADW) Services. Kim Sang, a registered nurse with the West Virginia Medical Institute (WVMI), completed a pre-admission screening (PAS) assessment of the Claimant on November 9, 2010 (Exhibit D-2) to evaluate medical eligibility for the program. The Department issued a potential denial notice (Exhibit D-3) on November 10, 2010, and a denial notice (Exhibit D-5) on December 3, 2010. Both notices indicated that only three deficits were awarded, and that a minimum of five deficits are required for medical eligibility.
- 2) Kay Ikerd, representative for the Department's Bureau of Senior Services, testified that the applicable policy for this proposed Department action is from the Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services. At §501.3.2, this policy (Exhibit D-1) states, as follows:

**501.3.2 MEDICAL CRITERIA**

An individual must have five (5) deficits on the Pre-Admission Screening Form (PAS), Attachment 14, to qualify medically for the

ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

<b>Section</b>	<b>Description of Deficits</b>	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for 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.	

- 3) Ms. Sang testified that the three areas in which deficits were awarded from the November 9, 2010, PAS were: *grooming, continence, and vacating the building in the event of an emergency.*
  
- 4) The Claimant testified that since the time of the PAS, her medical condition has changed. All areas of the PAS that potentially award deficits were reviewed with the Claimant, and there were no areas of dispute.

**VIII. CONCLUSIONS OF LAW:**

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for ADW Program services. The WVMI nurse determined, at the time of the PAS, that the Claimant had three qualifying deficits. Testimony from the Claimant proposed no additional deficits. The Department was correct to award three deficits and deny ADW services based on unmet medical eligibility.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility requirements.

**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.**

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**Todd Thornton**  
**State Hearing Officer**