



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 26, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 21, 2011. Your hearing request was based on the Department of Health and Human Resources' decision 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 meet the medical eligibility requirements for the Aged and Disabled Waiver program.

It is the decision of the State Hearing Officer to Reverse the proposal of the Department to terminate your medical eligibility for 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, BoSS

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

-----,

Claimant,

v. **Action Number: 11-BOR-631**

**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 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 21, 2011 on a timely appeal, filed January 14, 2011.

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

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver 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 Daughter and Homemaker Aide

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 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 October 12, 2010
- D-3 Notice of Potential Denial dated October 29, 2010
- D-4 Notice of Denial dated December 21, 2010

VII. FINDINGS OF FACT:

- 1) On October 12, 2010, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for her 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 Claimant and her daughter. During the assessment, Ms. Beihl identified the Claimant's functional deficits as bathing, grooming, and dressing.
- 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 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, Chapter 501.3.2.

Based on your PAS, you have deficiencies in only 3 areas, bathing, grooming, and dressing.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding her medical condition to WVMi within a two week timeframe from the date of the issuance of the notice.

- 4) On December 21, 2010, the Claimant was issued Exhibit D-4, Notice of Denial, informing her 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-bathing, grooming, and dressing.

- 5) The Claimant contends that additional deficits should have been awarded in the areas of vacating during an emergency, transferring, hearing, eating, and medication administration.

The following addresses the contested areas:

Vacating During an Emergency-The Claimant indicated that she resides in an upstairs apartment and must utilize six flights of stairs to vacate her residence. The Claimant testified that she relies on the facilities elevators to vacate her residence under normal circumstances. The Claimant purported that on the occasions in which the elevators are inoperable she is stranded at her residence. The Claimant indicated that her arms and legs are weak and she cannot use the available steps at her residence. Ms. Beihl documented in the PAS assessment that, "She [Claimant] uses a power chair in the home and states that if she needs to vacate without it, she needs assistance because of bilateral knee replacements, weakness, neuropathy, poor balance and unsteady gait." Ms. Beihl stated during the assessment the Claimant indicated that she could vacate with supervision and go down the elevator to vacate.

It is reasonable to assume that during an emergency the elevators at the Claimant's residence would be inoperable. The Claimant indicated during the assessment that she would require assistance in vacating in the absence of her power chair due to knee replacement and leg weakness. Policy requires that a deficit is awarded in vacating when the individual is mentally or physically unable to vacate their residence. Based on evidence and testimony, the Claimant would be physically unable to vacate her residence; therefore, an additional deficit in the contested area **can be** awarded.

Transferring-The Claimant stated that she has falls when relying on her furniture for assistance in transferring due to the furniture's instability. Additionally, the Claimant stated that she has difficulties transferring out of her bed at night and has suffered from falls while

attempting to transfer on her own. The Claimant stated that her legs are functional, but believes the origin of her medical problem is from her spine. Ms. Beihl documented in the PAS assessment that the Claimant, “Demonstrated ability to transfer without assistance during my visit, she states sometimes her legs won’t work and has to have help getting up.” Ms. Beihl testified that during the assessment she witnessed the Claimant transfer without assistance and assessed the Claimant as independent in transferring.

Although the Claimant physically demonstrated her ability to transfer on the day of the assessment, she indicated to the assessing nurse that she experiences difficulties with her legs and requires assistance in the area of transferring. The Claimant’s testimony concerning her inability to transfer without falling is credible and an additional deficit in the contested area **can be** awarded.

Hearing-The Claimant testified to her hearing loss and an inability to hear high tones. The Claimant stated that she uses a hearing aide.

Policy does not allow for a deficit in the area of hearing; therefore, a deficit in the contested area **cannot** be awarded.

Eating-The Claimant stated that she experienced a fall, which injured her face, that resulted in a torn muscle in her gum line. The Claimant indicated that the injury prohibits her from wearing her dentures and makes it difficult to eat. -----, the Claimant’s daughter and Homemaker Aide, indicated that she must grind up meat for her mother in order to assist her with eating. Ms. Beihl stated that the Claimant indicated during the assessment that she could cut her food and feed herself. Ms. Beihl testified that the Claimant indicated that she cut her meats in small pieces and denied the need to have her food ground.

Policy allows for a deficit to be awarded in the area of eating when the individual requires physical assistance to get nourishment. During the assessment, the Claimant indicated that she was able to feed herself, by cutting up her food into small pieces. Therefore, the Claimant does not require physical assistance in the contested area and an additional deficit **cannot** be awarded.

Medication Administration-The Claimant indicated that she sometimes forgets to take her medications and requires some prompting in the area.

Policy allows for a deficit to be awarded when the individual is incapable of administering their own medications. Testimony revealed that the Claimant requires supervision in the contested area and is capable of administering her medications. Therefore, a deficit in the contested area **cannot** be awarded.

6) 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.

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 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.

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:
(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 awarded deficits in the areas of bathing, grooming, and dressing.
- 3) Evidence presented during the hearing established additional functional deficits in the areas of transferring and vacating during an emergency. The Claimant's total number of deficits awarded is five; therefore, the Department was incorrect 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 **reverse** 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