



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

April 28, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 26, 2011. Your hearing request was based on the Department of Health and Human Resources' termination of your medical eligibility under 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 as follows: 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 your hearing reveals that you do not meet the medical eligibility requirements for the Aged/Disabled Waiver Program, based on the results of your December 30, 2010 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your eligibility for benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 11-BOR-737

**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 26, 2011 on a timely appeal filed February 2, 2011.

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
-----, Claimant's witness

Cecilia Brown, Department representative
Brenda Myers, Department's witness

It should be noted that the Department and its witnesses participated by conference call.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to deny the Claimant's medical eligibility for benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 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 December 30, 2010
- D-3 Notice of Potential Denial dated January 3, 2011
- D-4 Facsimile from [REDACTED] dated January 14, 2011
- D-5 Termination notice dated January 28, 2011

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of December 2010.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), Brenda Myers, completed a medical assessment (D-2) on December 30, 2010 in the Claimant's home and determined that he no longer meets the medical eligibility criteria for the program. The nurse testified that the Claimant received zero (0) deficits on the Pre-Admission Screening (PAS) assessment.
- 3) The Department sent the Claimant's listed case management agency, [REDACTED] a Notice of Potential Denial (D-3) on January 3, 2011. The form explained that if the Claimant believed he had additional information regarding his medical condition that was not considered, it should be submitted within the next two weeks to WVMI.
- 4) The Department acknowledged receiving additional information (D-4) from the Claimant on or about January 14, 2011. Included in the information were signed

statements from the Claimant, his daughter and homemaker, -----, and his case manager, -----. The WVMI nurse reviewed the newly submitted information and determined that it did not include any information that would allow her to change any of her original findings, and no deficits were awarded based on the new information.

- 5) The Department sent the Claimant a Notice of Denial (D-5) dated January 28, 2011, and the Claimant requested a hearing on February 2, 2011.
- 6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1) – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

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 501.3.1.1 states in pertinent part:

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 (D-1) MEDICAL CRITERIA states in pertinent part:

An individual must have five (5) deficits on the Pre Admission Screening (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.

#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.

- 9) During the hearing, the WVMi nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. After listening to the WVMi nurse explain her findings, the Claimant disagreed with her conclusions, and contends that deficits should be awarded in the areas of vacating the home in an emergency, eating, bathing, grooming, and bladder continence.
- 10) In the areas of transferring and walking, the Claimant contends that he should have been rated as needing a “supervised/assistive device” in order to transfer and walk, instead of the WVMi determined rating of being able to perform the activities “independently”. The Claimant would need to be rated as needing at least “one person assistance” in order for these two (2) areas to be eligible as deficits; however, he contends that in the event that medical eligibility is established through this hearing process, those areas should be considered in determining “level of care” points.
- 11) Policy in the Aged/Disabled Home and Community-Based Waiver Manual, Section 501.3.2.1, provides that there are four (4) levels of care for homemaker services. Points are determined by assessing specific areas of functioning. In order to assess points in the functional areas of transferring and walking, an individual must require at least a “supervised/assistive device” in performing the activity.
- 12) Because policy requires an individual to establish five (5) deficits during the Pre-Admission Screening assessment in order to establish his or her medical eligibility, the Claimant must show evidence to support deficits in all five (5) of the areas in contention; vacating the home in an emergency, eating, bathing, grooming, and bladder continence. If he is unable to show evidence of a deficit in any of these five (5) areas, his medical eligibility cannot be established.
- 13) In the area of “vacating a building in an emergency”, the Claimant was rated as being able to vacate his home in an emergency “independently”. In order for this area to qualify as a deficit, the Claimant would need to be rated as either mentally or physically unable to vacate his home. The WVMi nurse recorded her observations in relation to this functional ability on the PAS:

Discussed vacating with member and he states he can exit home independently without assistance. He transfers independently without difficulty. He walks independently without any assistive devices. Discussed using back door without steps built on as an escape and he feels confident he can get out back door as well. He says it's only a couple of feet from the door to the ground. Observed member transfer from the couch to a standing position a couple of times during visit. He transferred independently without difficulty. He walked from couch to edge of kitchen and back independently. Gait was of normal speed and steady. He denies using any type of assistive device such as cane, walker or the furniture to steady himself. While seated, member can cross his legs at his ankles, and his knees and can bend over and touch his feet without any difficulty. He can raise both arms above his head and touch the top of his head, shoulders and can extend arms down and around to reach middle of his back. No s/s [symptoms] of SOB [shortness of breath] noted. Grips were extremely strong in both hands.

The Claimant contends that he would not be able to vacate his home in the event of an emergency. He testified that he sometimes uses his cane during "bad days", and that he experiences shortness of breath with exertion, which would sometimes prevent him from exiting his home during emergencies without physical assistance. He stated that during the first week of December 2010 he fell and injured his leg, which causes him pain and difficulty walking. He wears a brace on his leg.

The WVMi nurse testified that she did not see a brace on the Claimant's leg the day of the assessment, and that he walked steady with no assistive devices that day. She added that the Claimant did not limp. She stated that the Claimant told her he "hardly ever" uses his inhaler. She added that the Claimant also told her that he sometimes "goes bear hunting" and "rough-houses" with his grandson. She stated that she explained the purpose of her visit to the Claimant at the beginning of the assessment, and the importance of open disclosure of health and functional abilities as the information obtained would be used to determine program eligibility as well as level of care.

The Claimant testified that the reason he told the nurse he could vacate independently on the day of the assessment was because he thought admitting that he could not would result in his being placed in a nursing home. He added that when he bear hunts he takes someone with him who does the actual hunting, and he stays in the vehicle because he is no longer able to "hunt" in the woods, and added that he loves the activity and this arrangement allows him to participate to a degree.

The Claimant's daughter, -----, stated that the Claimant has fallen while exiting his home in the past, and that he has been taken to the hospital several times due to shortness of breath.

After reviewing the additional evidence (D-4) that was submitted, the WVMi nurse documented on the PAS that much of the information included in the submitted letters was in complete contradiction to what the Claimant reported the day of the assessment. She recorded that the Claimant's daughter did not comment in her letter regarding his ability to vacate. She recorded that the "case manager" stated in her letter that there are times the Claimant gets short of breath and light headed and that he has trouble with his back and legs, adding that it may be possible he would have trouble vacating in an

emergency. The nurse recorded that she reviewed the comments the Claimant made during the assessment, including comments he made about “rough-housing” with his grandson and bear hunting, and found that none of the new evidence changed her original findings.

The Claimant reported in his letter that he is not comfortable talking about his problems with people he does not know. He stated that there are several things that he did not admit needing help with during the assessment that he does need assistance with “depending on the day”. He added that some days he can do more than on others. He did not mention anything specific to vacating in his letter.

It is clear from the evidence and testimony presented that the Claimant has provided two (2) completely different pictures in regard to his functioning abilities; therefore, although some weight will be given to the Claimant’s conflicting testimony, I am relying more on the observations made by the nurse the day of the assessment. In doing so, it is found that there is insufficient evidence to support that the Claimant, at the time of the assessment, was unable to exit his home independently during an emergency.

- 14) Having been unable to establish a deficit for the Claimant in vacating a building during an emergency, it is now found that the findings for the remaining four (4) areas contested by the Claimant are moot, since the Claimant must establish five (5) deficits to establish his medical eligibility; therefore, these four (4) areas of functional ability will not be decided.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver (ADW) Program. Policy stipulates that an individual must be mentally or physically unable to vacate their home in the event of an emergency in order to receive a deficit for vacating his home during emergencies.
- 2) The Claimant received zero (0) deficits in December 2010 in conjunction with his Aged/Disabled Waiver Program annual re-evaluation.
- 3) The Claimant contended that deficits should be awarded in five (5) areas of functional ability; vacating the home in the event of an emergency, eating, bathing, grooming, and bladder continence. As such, the Claimant would need to be awarded a deficit for each area contested in order to show medical eligibility for the Aged/Disabled Waiver Program.
- 4) The Claimant was unable to show evidence to support a deficit award for vacating the home in an emergency. The Claimant clearly reported during the assessment that he had no difficulty exiting his home should there be an emergency. He spoke of performing activities which would be consistent with this ability. Although his later testimony contradicted his earlier statements, more weight is given to the observations made by the nurse the day of the assessment. Her observations were consistent with the Claimant’s reported capabilities on that date.
- 5) The areas of functioning in relation to transferring and walking will also not be decided, since these two (2) areas were only contested for points in determining level of care when and if medical eligibility was established. The issue in relation to level of care is now moot.

- 6) The Department was correct in its decision to deny continued medical eligibility in the Aged/Disabled Waiver program based on the results of the December 2010 PAS.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's medical eligibility under the 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 28th Day of April, 2011.

**Cheryl Henson
State Hearing Officer**