



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

May 6, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 6, 2011. Your hearing request was based on the Department of Health and Human Resources' denial 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 February 4, 2011 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny your medical 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

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

-----,

Claimant,

v. **Action Number: 11-BOR-831**

**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 May 5, 2011 on a timely appeal filed March 4, 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

Kay Ikerd, Department representative
Teresa McCallister, Department's witness

It should be noted that the hearing was conducted 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 February 4, 2011
- D-3 Notice of Potential Denial dated February 14, 2011
- D-4 Denial Notice dated March 9, 2011

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an initial evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of February 2011.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), Teresa McCallister, completed a medical assessment (D-2) on February 4, 2011 in the Claimant's home and determined that he does not meet the medical eligibility criteria for the program. The nurse testified that the Claimant received four (4) deficits on the Pre-Admission Screening (PAS) assessment, and the Department stipulated that the Claimant established deficits in the areas of vacating a building during an emergency, bathing, grooming, and dressing.
- 3) The Department sent the Claimant's physician, Dr. [REDACTED] a Notice of Potential Denial (D-3) on February 14, 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 (2) weeks to WVMI.
- 4) The Claimant contacted the nurse on February 7, 2011 and informed her that he needed to correct some of the information he provided during the earlier assessment. He reported to her that he has had to rely on sponge bathing since October 2010, as he is unable to perform a shower transfer. The Claimant clarified during the hearing that he has a shower/tub combo unit, and he is unable to maneuver himself into the tub for showering or bathing. The Department determined that this information related to his ability to bathe, and did not change the outcome of the assessment since he was

assessed a deficit in the area of bathing. The Department sent the Claimant a final denial notice (D-4) dated March 9, 2011.

5) 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.

6) 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.

7) 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.

8) During the hearing, the WVMI nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. She added that she routinely documents her findings, as well as the individual's response to her questions, on a laptop during the PAS assessment interview. 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 bladder and bowel incontinence, transferring, walking, and medication administration.

9) In the area of bladder and bowel incontinence, the Claimant was rated as being continent of both bladder and bowel. The nurse testified that the Claimant denied any bladder or bowel incontinence at any time during the assessment.

The Claimant testified that he does not recall the area of bladder and bowel incontinence being discussed during the assessment. He stated "I have to use a urinal and stuff like that, and I can't get up and go to the bathroom at night." He stated that he has bladder incontinence approximately three (3) to four (4) times weekly. He added that he is not comfortable talking about this functional area. He added that he has difficulty keeping his toilet facilities clean. Further, he stated that at times he has awakened during the night with the bed having been soiled.

10) In the area of "transferring", the Claimant was rated as needing "supervised/assistive device" for this activity. The nurse stated that during the assessment the Claimant rose from a lying position on the couch. She stated that there was effort required and the Claimant used his hands to push himself up to a sitting position, and then to push off the seat to stand. She added that this was a slow process. She stated that the Claimant requested that both she and his friend turn away as he rose because of an "open robe", and as a result she was unable to see this part of the activity. She stated that since he did not require hands-on physical assistance to rise from the couch, he was not given a deficit in this area.

The Claimant stated that he did get out of his seat on the day of the assessment unassisted, but with great difficulty. He added that he was as honest as possible with his comments.

11) In the area of "walking", the Claimant was rated as needing "supervised/assistive device" for this activity. The nurse testified that she observed the Claimant walk approximately eight (8) to ten (10) feet while holding on to the walls and furniture for

support. She stated his gait was slow and unsteady, with shortness of breath observed, and that he reported pain in his lower abdomen with standing and walking. She stated that she was not able to give the Claimant a deficit in this area because he did not require hands-on assistance for the activity.

The Claimant testified that he has difficulty walking, and has not been out of his apartment since October 2010. He added that he can walk with a cane with great difficulty, and it is even more difficult to walk with a walker, due to shortness of breath issues. He acknowledged that he can walk without someone physically helping him. He stated that he questions the nurse's capability to assess his ability to move around in five (5) or six (6) minutes of the assessment. He stated that a more fair assessment would have included whether he could walk to his mailbox or to his car. The nurse stated that she is required by policy to only assess the Claimant's functional ability inside his home, and added that she was in his home for almost two (2) hours on the date of the assessment.

- 12) In the area of "medication administration", the Claimant was rated as needing "prompting/supervision" for this activity. The nurse testified that the Claimant reported to her that he sets his medicines up in a planner, and that he places the pills in his mouth with no difficulty. She added that the Claimant reported that he does forget his medication at times. She stated that because he was able to place the pills in his mouth without difficulty, he did not qualify for a deficit in this area.

The Claimant stated that he has at times duplicated medications from the same bottles, which causes problems, and that it would be very helpful to have someone set up his medications for him.

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.
- 2) The Claimant received four (4) deficits during the February 2011 PAS assessment, in the areas of vacating a building in an emergency, bathing, grooming, and dressing. He needs one (1) additional deficit in order to be medically eligible for the program. The Claimant contested the ratings received in the areas of bladder and bowel incontinence, transferring, walking, and medication administration.
- 3) In order to receive a deficit for bladder or bowel incontinence, policy requires that an individual must show evidence of being totally incontinent. The evidence does not support that the Claimant is totally incontinent of bowel or bladder. The Claimant did not report any episodes of incontinence on the day of the assessment. The nurse clearly documented this on her laptop during the assessment interview in the Claimant's home. Although his testimony during the hearing indicating some instances of bladder incontinence, the totality of the evidence is insufficient to support that he has total bladder or bowel incontinence.
- 4) In order to receive a deficit for transferring, policy requires that an individual show that he or she requires at least one person to physically assist them in this activity. The totality of the evidence does not support that the Claimant requires at least one person to physically assist him

in transferring. Although the Claimant reported, and the PAS assessment documented, that he has difficulty with transferring, the evidence shows that he performs this activity unassisted.

- 5) In order to receive a deficit for walking, policy requires that an individual show that he or she requires at least one person to physically assist them in this activity. The totality of the evidence does not support that the Claimant requires at least one person to physically assist him in walking. Although the evidence shows the Claimant has difficulty with walking, it also shows that he is performing the activity unassisted.
- 6) In order to receive a deficit for medication administration, policy requires that an individual must be unable to administer his or her own medications. The totality of the evidence shows the Claimant is administering his own medications.
- 7) As result of the above conclusions, the Claimant has not established the required five (5) deficits in order to establish medical eligibility for the Aged/Disabled Waiver program.
- 8) The Department was correct in its decision to deny medical eligibility in the Aged/Disabled Waiver program based on the results of the February 2011 PAS.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny 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 6th Day of May, 2011.

**Cheryl Henson
State Hearing Officer**