



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

May 10, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 4, 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 not meet the medical eligibility requirements for the Aged and Disabled Waiver program.

It is the decision of the State Hearing Officer to Uphold 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, RN, Bureau of Senior Services
CWVAS

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

-----,

Claimant,

v.

Action Number: 11-BOR-842

**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 4, 2011 on a timely appeal, filed February 25, 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, hereinafter ADW, 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

-----, Case Manager, [REDACTED]

Brian Holstein, Social Worker, Bureau for 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 dated January 10, 2011
- D-3 Notice of Decision dated February 16, 2011

VII. FINDINGS OF FACT:

- 1) On January 10, 2011, 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 Homemaker Aide. During the assessment, Ms. Beihl identified the Claimant's functional deficits as vacating a building, bathing, grooming, and dressing.
- 3) On February 16, 2011, the Claimant was issued Exhibit D-5, 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 4 areas-vacating a building, bathing, grooming, and dressing.

4) -----, the Claimant's representative contends that the Claimant remains medically eligible for the program and that additional deficits should have been awarded in the areas of walking and transferring.

The following addresses the contested areas:

Walking----- testified that due to the Claimant's diagnosis, she sometimes loses her balance and does not rely on her cane for assistance when walking. ----- stated that the Claimant's balance issues cause her to run into walls while ambulating and in the past have resulted in falls. ----- purported that the Claimant requires assistance to help her keep her balance. The Claimant testified that she becomes dizzy when walking and these episodes prevent her from walking in a straight line. The Claimant stated that she cannot predict when she will experience an episode of dizziness. ----- indicated that she has ordered the Claimant a walker which should provide her with some assistance. Ms. Beihl testified that she observed the Claimant walk without the assistance of a cane during the assessment.

In regards to walking, the assessing nurse documented in the PAS assessment that the Claimant, "Demonstrated walking with poor balance; unsteady gait; c/o pain with minimal exertion; has cane available. She is unable to use stairs d/t increased pain and vertigo" and assessed the Claimant as a Level II Supervised/Assistive Device. Policy requires that a deficit can be awarded in the area when the individual is assessed as a Level 3 or higher, meaning that the individual requires one-person physical assistance in the area. Testimony revealed that the Claimant suffers from balance issues, but utilizes a cane at her own discretion. The Claimant demonstrated her ability to ambulate without the aid of an assistive device at the assessment, and testimony indicated that an assistive device most likely will facilitate her abilities in the contested area. Testimony failed to demonstrate that the Claimant routinely required physical assistance to aid in her ability to ambulate; therefore, the assessing nurse correctly assessed the Claimant as a Level II Supervised/Assistive device.

Transferring----- testified that the Claimant does not utilize a cane for assistance due to her diagnosis and balance issues. The Claimant stated that she experienced a fall while showering that resulted in injury to her shoulder area. The Claimant stated that she is terrified of falling and requires assistance when showering. Ms. Beihl testified that she observed the Claimant transfer with the assistance of a cane during the assessment.

In regards to transferring, the assessing nurse documented in the PAS assessment that the Claimant, "Demonstrated transfer with heavy furniture assist with cane available; poor balance; c/o vertigo" and was assessed as a Level 2 supervised/assistive device. Policy requires that a deficit can be awarded in the area when the individual is assessed as a Level 3 or higher, meaning that the individual requires one-person physical assistance in the area. The Claimant's testimony concerning issues when showering relate to her ability to bathe, in which a deficit was awarded. While it is clear that the Claimant experiences balance issues and difficulties in the area of transferring, testimony failed to demonstrate that the Claimant required physical assistance to transfer; therefore, the assessing nurse correctly assessed the Claimant and a deficit in the contested area cannot be awarded.

5) 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.

6) 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.

7) 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 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 vacating a building, bathing, grooming, and dressing.
- 3) Evidence presented during the hearing failed to establish additional functional deficits. The Claimant's total number of deficits awarded is four; 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 May, 2011.

**Eric L. Phillips
State Hearing Officer**