



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 31, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 24, 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 no longer meet the medical eligibility requirements for the Aged/Disabled Waiver Program, based on the results of your February 16, 2011 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate 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
[REDACTED]

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

IN RE: ----- ,

Claimant,

v.

ACTION NO.: 11-BOR-916

**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 24, 2011 on a timely appeal filed March 22, 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 witness

Kay Ikerd, Department representative

Brenda Myers, 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 terminate 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 16, 2011
- D-3 Notice of Potential Denial dated February 25, 2011
- D-4 Denial Notice dated March 16, 2011

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing a re-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), Brenda Myers, completed a medical assessment (D-2) on February 16, 2011 in the Claimant's home and determined that she no longer meets the medical eligibility criteria for the program. The nurse testified that the Claimant received one (1) deficit on the Pre-Admission Screening (PAS) assessment, and the Department stipulated that the Claimant established a deficit in the area of grooming.
- 3) The Department sent the Claimant's case management agency, Putnam County Aging Program, a Notice of Potential Denial (D-3) on February 25, 2011. The form explained that if the Claimant believed she had additional information regarding her medical condition that was not considered, it should be submitted within the next two (2) weeks to WVMI. No additional information was submitted during this timeframe, and a final notice of termination was mailed to the Claimant on March 16, 2011.
- 4) 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.

5) 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.

6) 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.

- 7) 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 computer during the PAS assessment interview. After listening to the WVMI nurse explain her findings, the Claimant disagreed with her conclusions, and contends that additional deficits should be awarded in the areas of bowel incontinence, walking, transferring, bathing, eating, orientation, vacating the home in an emergency, and dressing.
- 8) The Claimant contends that the WVMI nurse came into her home on the date of the assessment exhibiting an "attitude" toward her. She also contends that the nurse did not spend enough time with her during the assessment, and that she seemed rushed. She added that the nurse would ask her a question, and then begin "writing the first thing I said instead of letting me finish."
- 9) The WVMI nurse stated that she was present in the Claimant's home for approximately one (1) hour and thirty (30) minutes during the assessment, which she determined to be an appropriate amount of time for completion of the assessment interview. She stated that before discussing each functional area on the assessment individually with the Claimant, she completed a brief overall functional observation. She stated that she observed the Claimant transferring from her rocker-recliner chair a few times during the assessment. She added that the Claimant stood "under her own strength" and placed her hands on her arm rest in order to steady herself. She added that she observed the Claimant ambulate unassisted into her kitchen and then into her bedroom with a normal pace and steady gait. She stated that the Claimant reached out once during her ambulation and placed her hand on the countertop as she walked past it.

The nurse added that the Claimant sat during the assessment with her legs "drawn up and placed underneath her, and then later with her legs crossed at the knees," She stated the Claimant "can cross both legs at the ankles and at the knees." She added that the Claimant can reach down to just below her knees. She added the Claimant can reach her hands above her head and touch the top of her head and shoulders. She added the Claimant can extend her arms around in order to touch her lower mid back. She added she observed the Claimant has pain in her left shoulder which reduces her mobility in her left arm. She added that the Claimant's "grips" in both her hands was fair.

- 10) In the area of bowel incontinence, the Claimant was rated as being continent. The nurse testified that the Claimant denied any bowel incontinence at any time during the assessment interview. The nurse documented that the Claimant used no incontinence supplies.

The Claimant contends that she has had bowel incontinence at night for approximately two (2) years, and that it happens five (5) or six (6) times per week. She contends the nurse did not ask this question during her assessment. She added that she uses protective "diapers" at night because of this problem. She stated "I don't even realize I do it."

The Claimant's daughter, [REDACTED] testified that the Claimant has bowel incontinence every night, and that she tries to keep incontinence supplies for her. She added that she has changed and cleaned the bed for the Claimant.

The WVMi nurse testified that she reviewed the PAS assessment findings with the Claimant prior to finalizing her notes, and the Claimant voiced no disagreement with her documentation at that time.

- 11) In the area of "orientation", the Claimant was rated as being totally oriented. The WVMi nurse documented that the Claimant signed and dated the consent form and only asked her to confirm the date in order to "check" herself. She also documented that the Claimant knew the current month and year, could verbalize her address, date of birth, and social security number. She also documented that the Claimant knew that "Obama" was the President, and that she denied becoming disoriented to person, place, or time.

The Claimant testified that she is much disoriented every day, and that when she gets up at night she falls. When asked if she is falling due to disorientation, she stated that she does not know. She stated that on the day of the assessment, she recalls telling the nurse that she knew her name, address and the name of the President. The Claimant testified that the nurse read off her address and then asked her if it was correct. The WVMi nurse stated that she never reads off an address for confirmation. She stated that she asks the individual to tell her their address in order to help determine whether they are oriented.

The Claimant relayed a past experience from a visit to a fast food restaurant with her daughter and son-in-law, in which she handed the waitress a twenty dollar bill (\$20.00) and asked her to exchange it for smaller bills. She stated that she then walked off without having received the smaller bills and did not realize she had done so. She added that her son-in-law saw what happened and retrieved the smaller bills from the waitress for her.

- 12) In the area of "walking", the Claimant was rated as needing "supervised/assistive device", meaning the Claimant can walk with supervision and/or an assistive device. The nurse documented during the PAS assessment that the Claimant told her that she walks independently and does not use a cane or walker, but that she sometimes holds on to furniture or countertops due to losing her balance at times.

The Claimant's daughter testified that the Claimant's legs "swell" from the knees to her feet. She stated that her mother walks with no physical assistance in her home, but that when she goes outside, she requires physical assistance. She added that the Claimant falls "a lot".

- 13) In the area of "transferring", the Claimant was rated as needing "prompting/supervision", meaning she can perform this function with prompting and/or supervision. The nurse documented that the Claimant transferred under her own strength and did not seem to have difficulty standing from her recliner. She also documented that the Claimant place her hands on the arm rest to stand, and that the Claimant reported losing her balance at times. She documented that the Claimant denied needing physical assistance to get out of bed.

The Claimant stated that she is always afraid she is going to fall; however, she also

went on to say that she does not need assistance “in getting up”, but that she has to push herself “up” from a seated position.

- 14) In the area of “bathing”, the Claimant was rated as “self/prompting”, meaning she can perform this activity by herself or with prompting. The nurse documented that the Claimant told her she usually waits to bathe until someone is in the home with her, but that she denied that anyone assists her to shower. She documented that the Claimant has a step-over garden tub and that she steps over into the tub/shower independently and washes her body by herself. She documented that the Claimant reported that she holds onto the walls of the shower as she washes herself, and she denied having a shower chair. She also documented that the Claimant stated in order to wash her back she uses the wash cloth and extends her arms over her shoulders and up from the bottom with her right arm, and that she stated in order to wash her lower legs and feet she squats down and washes them.

The Claimant testified that she “just needs help”. She added that she can’t wash her back, and spoke of a car accident two (2) years ago. She stated that she can barely use her left arm now. She stated that she did not remember telling the nurse that she could bathe without physical assistance.

- 15) In the area of “eating”, the Claimant was rated as “self/prompting”, meaning she can perform this activity by herself or with prompting. The nurse documented during the assessment that the Claimant can feed herself and cut up her own foods, and that when asked specifically about cutting up firm or tough foods, the Claimant stated she did not need physical assistance.

The Claimant testified that she does not have all her teeth, and therefore she must eat soft foods. She added that she does not need anyone to cut up the foods she eats.

- 16) In the area of “vacating in an emergency” the Claimant was rated as being able to vacate her home in the event of an emergency independently. The nurse documented on the PAS that the Claimant told her she could vacate without assistance, and that she said she could get out either through the front or back door or by breaking a window. She also documented that the Claimant “does not walk with use of any type of assistive device and does not even have those pieces of equipment in the home. She does not use O2 [oxygen] or breathing treatments as well and does not have any mental dx [diagnosis] that would cause her to be mentally impaired to vacate.”

The Claimant stated the only way she could possibly vacate in an emergency is due to the adrenaline. She stated that she would need reassurance that she could walk steady without falling. The Claimant states she has emphysema and COPD [Chronic Obstructive Pulmonary Disease], and that she uses “Advair” as an inhaler and “Spiriva”.

The PAS assessment notes that the Claimant is listed as having dyspnea, with the nurse documenting that the Claimant complains of shortness of breath and that she takes “Advair” daily. The PAS also documents that the Claimant takes medication for panic attacks.

- 17) In the area of “dressing” the Claimant was rated as “self/prompting”, meaning she is able to perform this function by herself or with prompting. The WVMI nurse

documented that the Claimant stated she can dress herself and states she normally wears pull-over shirts and can get them on over her head and arms through her sleeves. She also documented the Claimant stated that for underwear and pants she sits down to get her legs started through her pant legs and then stands and pulls them up. The Claimant is also documented as reporting that she does not wear a “bra” most of the time but when she does wear one she will both fasten it in the front and turn it around or she wears one that fastens in the front. She is also documented as reporting she can put her own socks and shoes on her feet, and that she crosses her legs at the knee to get her socks on and then sits on the floor drawing her legs up to tie her shoes.

The Claimant’s daughter stated that there are days when the Claimant requires assistance with dressing.

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 one (1) deficit during the February 2011 PAS assessment, in the area of grooming. She needs four (4) additional deficits in order to be medically eligible for the program. The Claimant contested the ratings received in the areas of bowel incontinence, transferring, walking, bathing, eating, dressing, orientation, and vacating in an emergency.
- 3) In order to receive a deficit for 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 her bowels. The Claimant did not report any episodes of incontinence on the day of the assessment. The nurse clearly documented this on her laptop computer during the assessment interview in the Claimant’s home. Although her testimony during the hearing indicating some instances of bowel incontinence, the totality of the evidence is insufficient to support that she has established that she has total 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 inside their home with this activity. The totality of the evidence does not support that the Claimant requires at least one person to physically assist her in transferring. The Claimant transferred unassisted during the assessment interview, and she testified that she does not need physical assistance in order to transfer. Her testimony supported that she needs assistive devices in order to transfer.
- 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 inside their home with this activity. The totality of the evidence does not support that the Claimant requires at least one person to physically assist her in walking. Both the Claimant and her witness testified that she can walk with the use of assistive devices and without physical assistive inside her home.
- 6) In order to receive a deficit for bathing, policy requires that an individual show that he or she requires physical assistance in order to bathe. The PAS clearly documents that the Claimant told the nurse during the assessment interview that she performs this activity without physical assistance, and that she uses assistive devices in order to steady herself. The Claimant testified during the hearing that she cannot wash her back due to the lack of use of her left arm, and that she does not recall telling the nurse that she could bathe without physical assistance. The totality of the evidence in this area supports that the Claimant does not require physical

- 7) In order to receive a deficit in eating, policy requires that an individual show that he or she requires physical assistance in order to get nourishment, not preparation. The Claimant testified that she can eat her food once prepared without physical assistance, and that she does not need someone to cut up her foods. The evidence supports that the Claimant does not need physical assistance in this area.
- 8) In order to receive a deficit in dressing, policy requires that an individual show that he or she requires physical assistance in order to dress. The nurse clearly documented on the PAS the day of the assessment that the Claimant reported being able to dress herself without physical assistance. This documentation is thorough and explains in great detail how the Claimant reported being able to accomplish this task. Although the Claimant's daughter testified that the Claimant requires physical assistance at times, the totality of the evidence supports that the Claimant does not require physical assistance for dressing.
- 9) In order to receive a deficit for orientation, policy requires that an individual be totally disoriented, or comatose. The nurse documented on the PAS, on the day of the assessment, that the Claimant knew her name, address, the President's last name, the present month and year, her date of birth, and her social security number. The evidence supports that the Claimant is not totally disoriented or comatose.
- 10) In order to receive a deficit for vacating a building in an emergency, policy requires that an individual be physically or mentally unable to vacate his or her home in an emergency. The nurse recorded on the PAS, on the day of the assessment, that the Claimant reported that she could vacate her home unassisted during an emergency; however, the PAS also clearly documents that the Claimant has episodes of dyspnea, and that she takes medication for panic attacks. The Claimant testified during the hearing that she would need physical assistance to vacate her home in the event of an emergency. The totality of the evidence in this area supports that the Claimant is unable to vacate her home in an emergency without physical assistance. Her problems with breathing, coupled with the fact that she is subject to panic attacks, would render her in need of physical assistance to vacate during such an emergency, and therefore one (1) deficit is awarded in this area.
- 11) As result of the above conclusions, the Claimant has established one (1) additional deficit in the area of vacating her home in an emergency, for a total of two (2) deficits. As such, she has not established the required five (5) deficits in order to establish medical eligibility for the Aged/Disabled Waiver program.
- 12) 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 31st Day of May, 2011.

**Cheryl Henson
State Hearing Officer**