



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

July 14, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law for your hearing held on July 12, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Aged/Disabled (HCB) Title XIX Waiver Services Medicaid 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 the hearing reveals that your medical condition continues to require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home and Community Based Waiver Services Program.

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to terminate your benefits and services provided through the Aged/Disabled Waiver Services Medicaid Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
BoSS / WVMI

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

-----,

Claimant,

v.

Action Number: 11-BOR-947

**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 July 12, 2011 on a timely appeal filed March 29, 2011.

It should be noted that benefits and services have continued pending the hearing process.

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

-----, [REDACTED] – Claimant’s Witness

-----, Homemaker, [REDACTED] – Claimant’s Witness

Angel Khosa, LSW, BoSS – Department Representative (participated telephonically)

Debra Lemasters, RN, WVMI – Department Witness (participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to terminate the Claimant's benefits and services provided through the Aged/Disabled Home and Community-Based Waiver Services Medicaid Program.

V. APPLICABLE POLICY:

Medicaid Aged/Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Medicaid Manual, Section 501.
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 3/2/11
- D-3 Notice of Potential Denial dated 3/4/11
- D-4 Medical Necessity Evaluation Request dated 11/8/10
- D-5 Prescription Note Pad - signed by [REDACTED] M.D. - 3/3/10
- D-6 Dr. [REDACTED] response to a medical conditions/symptoms verification request
- D-7 Notice of Termination/Denial dated 3/24/11

Claimant's Exhibits:

- C-1 Dr. [REDACTED] medical evaluation, New order for electric wheelchair, Plan of Care (2/8/11 – 8/8/11), Nursing assessment (2/8/11), Homemaker worksheets from February 2011 and March 2011.

VII. FINDINGS OF FACT:

- 1) On March 2, 2011 the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged and Disabled Waiver Services Medicaid Program, hereinafter ADW Program [See Exhibit D-2, Pre-Admission Screening (PAS) completed on 3/2/11].
- 2) On or about March 4, 2011, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

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 – Vacate a building, Bathing and Dressing.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks. Exhibit D-5 was received timely and considered in the final determination.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated March 24, 2011 (Exhibit D-7). This notice states, 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 a 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 – Vacate a Building, Bathing, Dressing and Continence.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) As noted in the previous finding, the Department stipulated that the Claimant was demonstrating four (4) deficits but indicated the medical assessment completed in March 2011 fails to identify five (5) functional deficits necessary to establish medical eligibility for participation in the ADW Program.
- 5) The Claimant contends that she remains medically eligible to participate in the ADW Program as she is also demonstrating a functional deficit in grooming.

The following addresses findings specific the contested area(s):

Grooming – Policy dictates that an individual must require hands-on physical assistance in order to qualify for a deficit in grooming. Debbie Lemasters, RN, West Virginia Medical Institute (WVMI) testified that the Claimant reported she has bad days approximately once a week and because her toenails do not need cut daily, she did not award a deficit in grooming. The Claimant purported that she has Multiple Sclerosis and the symptoms often cause her to have limited use of her hands and arms. She testified that her granddaughter usually cuts her fingernails and toenails and that her homemaker will complete this task if her granddaughter is not available. In addition, the Claimant reported that she is unable to manipulate hair clips and rubber bands to fix her hair and that she often requires assistance with washing her hair. -----, submitted Exhibit C-1 and noted that the Claimant's Plan of Care and Homemaker Worksheet demonstrate the Claimant was receiving assistance with nail and hair care at the time of the medical assessment. The Claimant's testimony is credible and corroborated by the evidence - The Claimant is demonstrating a deficit in grooming.

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 A/DW 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) Medicaid policy requires that an individual must demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded four (4) deficits on a PAS completed by WVMI in March 2011 – Vacate a Building, Bathing, Dressing and Continence.
- 3) The evidence submitted at the hearing confirms that the Claimant was demonstrating a deficit in grooming at the time of the assessment.
- 4) Whereas the Claimant has five (5) program qualifying deficits, continued medical eligibility for participation in the Aged/Disabled Waiver Medicaid Program is therefore established. The Claimant's LOC determination shall include the point(s) awarded from this decision.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to terminate the Claimant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of July, 2011.

**Thomas E. Arnett
State Hearing Officer
Member, Board of Review**