



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 East Third Avenue  
Williamson, WV 25661

Earl Ray Tomblin  
Governor

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

June 29, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 23, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical 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 Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged and 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 and Disabled (HCB) Services Manual Section 501]

Information submitted at your hearing reveals 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 deny your application for the Aged and Disabled Waiver Program.

Sincerely,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Kay Ikerd, RN, WV Bureau of Senior Services  
-----, [REDACTED] WV

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

**IN RE: -----,**

**Claimant,**

**v.**

**Action Number: 11-BOR-948**

**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 via telephone conference call on June 23, 2011, on a timely appeal filed March 31, 2011.

**II. PROGRAM PURPOSE:**

The Aged and Disabled Waiver (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 daughter and representative

-----, [REDACTED] Claimant's witness

Angel Khosa, WV Bureau of Senior Services, Department's representative  
Brenda Myers, RN, West Virginia Medical Institute, Department's witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its proposal to terminate Claimant's participation in the Aged and Disabled Home and Community-Based Waiver Program based on a yearly Pre-Admission Screening conducted on February 24, 2011.

#### **V. APPLICABLE POLICY:**

Aged and Disabled Home and Community-Based Services Manual Section 501.

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- D-1 Aged and Disabled Home and Community-Based Services Manual Section 501.3.
- D-2 Pre-Admission Screening (PAS) assessment conducted on February 24, 2011.
- D-3 Denial letter APS Healthcare, dated March 25, 2011.

#### **VII. FINDINGS OF FACT:**

- 1) Claimant was a participant in the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of his continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in his home on February 24, 2011. (Exhibit D-2.)
- 2) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.3.2 (Exhibit 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.

- 3) Department's witness testified that she conducted the PAS on February 24, 2011 in the Claimant's home. She stated that Claimant, Claimant's daughter and Claimant's spouse were present. She added that she subsequently determined Claimant received three (3) deficits on the PAS assessment for vacating a building in the event of an emergency, eating and grooming, and therefore did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department sent the Claimant a Notice of Denial dated March 25, 2011. (Exhibit D-3.) The notice was addressed to Claimant and mailed to -----, [REDACTED]-----.
- 5) Claimant's representative, his daughter, testified that she was not present for the PAS. She stated that Claimant's other daughter, who is not as familiar as she is with her father's medical condition, was present. She testified that she felt Claimant should have received deficits in the areas of bathing, dressing, continence, orientation and walking.
- 6) **Bathing** is addressed within the area of the PAS listed as Item #26, Functional Abilities which includes instructions to "indicate the individual's functional ability in the home for each item listed therein." The WVMI nurse rated the Claimant at a Level 1, "Self/Prompting," meaning he is capable of performing this activity, although someone may have to remind him to do it. On the "Nurse's overall comments" section of the PAS, the nurse wrote, "[Claimant] states he showers independently. He states he gets in and out of shower and washes all of his body by himself. He states he has long arms and can wash his own back, feet and legs. [Claimant's daughter] . . . adds that he leaves the door unlocked in case he would fall and need help." Claimant's representative stated that she and her sister had to assist with bathing because they were afraid Claimant would fall while taking a shower. Claimant's witness stated she assisted the family in obtaining a

support stand that made it easier for him to get in and out of the bathtub. Department's witness responded that on the date of the assessment she was provided with the information that he was able to shower independently. She stated that when Claimant's daughter told her that Claimant kept the door to the bathroom unlocked while he was bathing, she took that as confirmation that Claimant was showering without assistance.

- 7) **Dressing** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMI nurse rated the Claimant at a Level 1, "Self/Prompting," meaning he is capable of performing this activity. On the "Nurse's overall comments" section of the PAS, the nurse wrote, "[Claimant] states he dresses independently. He states he can get shirts whether pull over or button shirts, pants, socks and shoes on by himself. He states that he has to sit down and get pants started and then pulls them up but does all of this by himself without help. He states he can zip and button clothing items as well." Claimant's representative testified that she has to purchase all of Claimant's clothes so that she can be sure he has only pull-over shirts, elastic waist-band pants and step-in shoes in order to avoid buttons and zippers. She stated she or her sister has to button his shirts and zip his pants.
- 8) **Continence** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMI nurse rated the Claimant at a Level 1, "Continent." On the "Nurse's overall comments" section of the PAS, the nurse wrote, "[Claimant] denies any accidents with his bowels or bladder and states he does not use any type of pad or [adult diaper]." Claimant's representative testified that Claimant does not like to talk about his incontinence, but he has urinary and bowel incontinence and he keeps pads on his bed. Department's witness responded that she understood this is a very private and delicate issue and it may be difficult for a person to admit he or she has this problem. However, she stated, on the day of the assessment, both Claimant and his daughter denied that he had this problem, or that he had to use bed pads and/or adult diapers.
- 9) **Orientation** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMI nurse rated the Claimant at a Level 1, "Oriented." On the "Nurse's overall comments" section of the PAS, the nurse wrote, "[Claimant] is alert and oriented X 3. He dated the consent [form] without prompting. He verbalized his street address, [date of birth] and Social Security number, and that Barack Obama is the President. We discussed disorientation and he denies becoming disoriented to person, place or time. Daughter states he does not become disoriented to person, place or time as well. She states that he will get confused about an event that took place in the past . . . and his memory is not as good." Claimant's representative testified that her father is in the early stages of Alzheimer's disease. She testified that he gets easily confused when he is not in his home. She stated he wanders around his apartment looking for items and then forgetting for what item he was searching. Department's witness responded that orientation is not a measure of an individual's memory. She stated that orientation refers to an individual's awareness of person, place and time. She testified that during the assessment, he signed a consent form and dated it without having to be reminded of the date, and that he was able to tell her his name, mailing address, date of birth and social security number, and that the current President of the United States was President Obama.

- 10) **Walking** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMI nurse rated the Claimant at a Level 2, "Supervised/Assistive Device," meaning he is capable of performing this activity with someone watching him, with the aid of a device such as a cane or a walker, or by holding onto objects such as furniture. On the "Nurse's overall comments" section of the PAS, the nurse wrote, "[Claimant] used uses the furniture and walls to steady himself as he walks in the apartment. He denies using a cane or walker in the home." Claimant's representative testified that her father falls frequently. She stated that he tries to walk around and his care-givers try to watch and stay close to him, so that they can catch him if he falls. She added that his legs are weak. Department's witness stated that she observed Claimant had to push himself up to stand and that he did walk slowly, but he was able to walk around his apartment. She stated that he had to hold onto things to steady himself, but that meets the definition of an assistive device. She pointed out that Claimant's representative testified she had to watch him when he walks. She stated that in order to assess Claimant with a deficit for walking, one person would have to assist him with his walking and he would not be able to walk under his own power.
- 11) Department's witness testified that on the day of the assessment, Claimant's other daughter was present and told her she and her sister, Claimant's represented, shared home care duties equally. She testified that Claimant's daughter helped clarify and correct her father's responses to the assessment questions, and her clarifications allowed the witness to assess Claimant with deficits that he would not have received otherwise. She stated that because of this, she had no reason to believe Claimant's daughter was not a reliable source of information about Claimant's condition.

#### **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 Program. On his PAS that was performed on February 24, 2011, Claimant was assessed with three (3) deficits.
- 2) The Department was correct in its decision to not award a deficit for bathing. Claimant received a rating of "Level 1 – Self/Prompting" for this functional ability. Testimony and evidence revealed that Claimant stated during the assessment he showered independently, and his daughter supported this statement by indicating he kept the door unlocked while he showered.
- 3) The Department was correct in its decision to not award a deficit for dressing. Claimant received a rating of "Level 1 – Self/Prompting" for this functional ability. Testimony and evidence revealed that Claimant told the assessing nurse he could dress himself and that his daughter did not indicate otherwise.
- 4) The Department was correct in its decision to not award a deficit for continence. On the PAS that was completed on February 24, 2011, the assessing nurse wrote that Claimant reported he was continent and did not use bed pads or adult diapers.
- 5) The Department was correct in its decision to not award a deficit for orientation. Testimony and evidence revealed that Claimant dated a document on the day of the

assessment without prompting, that he could say his name, address, date of birth and social security number, and that he could identify who is the President of the United States. This meets the definition of being oriented to person, place and time.

- 6) The Department was correct in its decision to not award a deficit for walking. Claimant received a rating of “Level 2 – Supervised/Assistive Device” for this functional ability. Testimony and evidence revealed that Claimant had to support himself as he walked around his apartment and his care-givers had to watch him as he did so, but this does not justify rating Claimant at “Level 3 – One Person Assist.”
- 7) Claimant’s representative was not able to offer substantive evidence that would result in Claimant receiving an additional deficit.
- 8) The required five (5) deficits have not been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency’s proposal to deny Claimant’s application to 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 29<sup>th</sup> Day of June, 2011.**

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**Stephen M. Baisden  
State Hearing Officer**