



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

Rocco S. Fucillo
Cabinet Secretary

July 24, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 19, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical eligibility under the Title XIX Aged/Disabled Waiver (ADW) 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 continue to meet the medical eligibility requirements for the Aged/Disabled Waiver Program based on the results of your March 15, 2012 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **reverse** 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
First Care Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1204

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual, and was convened on July 19, 2012.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver Program (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 representative

Kay Ikerd, Department representative
Brenda Myers, Department's witness

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 decision to terminate the Claimant's medical eligibility for benefits under the Aged/Disabled 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 Excerpts from Aged/ Disabled Home and Community-Based Services Manual Section 501.5
- D-2 Pre-Admission Screening (PAS) assessment completed March 10, 2011
- D-3 PAS assessment completed March 15, 2012
- D-4 Letter dated April 10, 2012, from Claimant's physician
- D-5 Notice of Decision dated April 5, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver (ADW) Program during the month of March 2012.
- 2) A Registered Nurse (RN) employed by the West Virginia Medical Institute (WVMI), Brenda Myers, completed a medical assessment (D-3) on March 15, 2012, 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 three (3) deficits on the Pre-Admission Screening (PAS) assessment. The Department stipulated during the hearing that the Claimant established one (1) deficit each in the areas of bathing, dressing, and grooming.
- 3) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (D-1) – MEMBER ELIGIBILITY, provides in part:
 - 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.
- 4) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (D-1) states in pertinent part:

APS Healthcare/IRG is the contracted entity that is responsibility [sic] for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services.

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW services receives an appropriate Service Level that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the State.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1, (D-1) Medical Criteria, states in pertinent part:

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.

- 6) During the hearing, the RN discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. After listening to the RN explain her findings, the Claimant disagreed with her conclusions, and contends that additional deficits should be awarded in the areas of vacating a building in an emergency, continence, transferring, walking, and administering medications.
- 7) In the area of vacating a building in an emergency, the Claimant was rated as being able to vacate with supervision. Policy specifies that to receive a deficit in the area of vacating, an individual must be physically or mentally unable to vacate a building. The RN recorded the following pertinent information during the assessment:

Vacating: Discussed her ability to vacate in the event of an emergency. I reviewed with her my observation of her ability to transfer and walk and her ability to vacate her home quickly in the event of an emergency. She is not dependent on the walker but does use it often. She states she can walk independently and did so during visit, [sic] She has two entrances and exits and she states she feels confident she could get out one of the doors and then even stated on her own “even one of the windows if I had too [sic]” as the windows are low to the ground. I further asked if she really thought she could get out a window considering her back pain etc [sic] and she again affirms that she could physically do so. Based her [sic] her functional ability today as she states she is having a bad day RN does agree that she would have the physical and mental ability to vacate but will mark supervision due to use of assistive device at times. Apartment is ground level.

Functional Observation – Member was standing at the front door with it open when [I] arrived as I had called to confirm location of her home. She was using a “rollater” walker and walked from front door a few feet to sit on the couch. Later observed her transfer during assessment to answer telephone and she did gently steady herself with couch cushions when she stood but did so without difficulty. She walked to phone which was only 6 feet without her walker. She has a slight limp or noted stiffness with walking independently but was normal pace and steady. While seated she can cross both legs at the ankles and knees but has to lift each leg to get high enough to cross at

the knee. She can lean forward with both hands and touch the top of her feet. She can raise and extend both arms above her head and can touch the top of her head [and] shoulders and can extend each arm down and around to lower back. Grips are fairly strong in both hands. She stated today she is having a bad day.

RN Myers stated that she typically waits until she has observed the Claimant walk and transfer before assigning a rating in this area. She stated that in reviewing the Claimant's 2011 PAS assessment, she found that she was rated as being physically unable to vacate; however, she added that, unlike her current situation, the Claimant was living in a different home at that time which had steps, and was reportedly using a motorized wheelchair at times on days that it was too painful for her to walk. She further added that these two factors affected the difference in her rating from last year to this year.

The Claimant's representative, -----, stated that the Claimant's home has two exits; however, she added that one of the exits is blocked. She stated that she is the Claimant's Case Manager, and that in her opinion the Claimant would be unable to vacate in an emergency due to her severe chronic pain and difficulty transferring and walking. She stated that the Claimant is very slow in transferring and walking, and that the added use of an assistive device also prevents her from evacuating quickly without physical assistance.

The Claimant testified that she knows she could not vacate quickly enough without physical assistance during an emergency. She stated that there are days she cannot get out of bed to get to her walker without physical help. She also spoke to RN Myers' comments regarding steps in her present home and her motorized wheelchair. She stated that she does not have room in her current home for her motorized wheelchair and that although she sometimes needs it, it is currently in storage. She added that her current home has two (2) steps, and that she has fallen more than once as a result. RN Myers commented that she does not recall the Claimant reporting to her during the PAS assessment that she sometimes needs physical assistance getting out of bed, and that she did not tell her that her back exit was blocked off.

The Department presented as evidence a letter (D-4) from the Claimant's physician dated April 10, 2012, which the Department indicated it did not consider because it was received after the Department made its decision on April 5, 2012. In the letter, the physician stated that the Claimant suffers from severe chronic pain due to lumbar spinal stenosis and avascular necrosis of both hips. The physician added that she also has hypertension, high blood sugar, high cholesterol, hepatitis C, and as a result has severe limitations in her ability to even get out of bed and do her own toileting, bathing, and meals. The physician adds that she is unable to function and get out of her home independently. Although this document was not used by the Department due to its late submission, it is being considered and given proper weight for the purpose of supporting the Claimant's testimony.

- 8) In the area of bowel/bladder continence, the Claimant was rated as being continent of both bowel and bladder. Policy specifies that an individual must be totally incontinent

of bowel or bladder to receive a deficit in this area. The RN documented the following relevant information during the PAS assessment:

Continence Bowel/Bladder: She [Claimant] denies any incontinence with bowels or bladder. I asked if she had any leakage etc [sic] with urine or bowel and she denies. She denies use of [sic] pads, pull ups [sic] etc [sic]

The Claimant testified that she misled the RN during the PAS assessment because she was embarrassed. She stated that she sometimes cannot make it to the bathroom due to several medications she takes, and that she sometimes needs someone to help her clean up afterward.

- 9) In the area of transferring, the Claimant was rated as needing supervision/assistive devices to transfer and did not receive a deficit. Policy specifies that to receive a deficit for transferring, an individual must require one or two-person assistance. The RN documented the following on the PAS:

Transferring: She states sometimes she sleeps in the couch and sometimes in bed and she has a regular bed. She pushes against the furniture to help support herself as she stands. She denies any use of elevated commode or hold onto any thing [sic] since having her hip replaced last spring.

----- stated that in her interaction with the Claimant, she often needs to physically assist her in transferring. The Claimant stated that she does use furniture to push herself up from a seated position, but sometimes also requires one-person physical assistance. She added that the reason she sometimes does not sleep in her bed is because she often cannot get out of the bed without physical assistance. Further, she stated that she often leaves the key to her home in her mailbox for the homemaker, as the homemaker sometimes must use it to enter her home when she is unable to get up unassisted. She added that the RN did not ask her why she sometimes slept on her couch or if she needed physical assistance at times when transferring.

- 10) In the area of walking, the Claimant was rated as needing supervision/assistive devices and did not receive a deficit. Policy specifies that to receive a deficit for walking, an individual must require at least one-person physical assistance to walk. The RN documented the following pertinent information on the PAS:

Walking: She walks using a “rollator” walker and independently [sic] at times in the home.

----- stated that she has never observed the Claimant walk independently. She added that she has been the Claimant’s Case Manager since 2011 and sees her three (3) to four (4) times a year. The Claimant stated that she can walk “pretty good” with her walker; however, she walks slowly due to the pain. RN Myers confirmed that the Claimant only walked a few steps independently in her home.

- 11) In the area of medication administration, the Claimant was rated as being able to administer her own medications unassisted. Policy specifies that to receive a deficit for medication administration, an individual must be incapable of administering their medications. RN Myers documented the following pertinent information on the PAS:

Member states she takes pills directly out of rx [prescription] bottles daily and can place them into her own mouth. Discussed with her mental capability of remember [sic] to take them as prescribed on her own or if she required prompting or supervision by HM [Homemaker] or family and she states that she is mentally capable of taking them on her own and does so.

RN Myers stated that during the Claimant's 2011 PAS assessment she was rated as needing prompting and supervision in this area, but added that a rating of prompting and supervision is not awarded a deficit. The Claimant stated that she continues in 2012 to need prompting and supervision in this area, but she can take the medication once reminded.

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 ADW Program.
- 2) The Claimant received three (3) deficits during the March 2012 PAS assessment, in the areas of bathing, grooming, and dressing. She must be assessed two (2) additional deficits in order to be determined medically eligible for the program. The Claimant contested the ratings she received in the areas of vacating, continence, transferring, walking, and medication administration.
- 3) The evidence and testimony regarding vacating is sufficient to support the award of one (1) deficit. Policy specifies that an individual must be physically or mentally unable to vacate in order to receive a deficit in this area. The totality of the evidence supports that although the Claimant is able at times to ambulate with the use of assistive devices, she is not be able to ambulate quickly enough in the event of an emergency to get out of her home safely without physical assistance.
- 4) The evidence and testimony regarding continence is insufficient to support the award of a deficit. Policy specifies that an individual must be totally incontinent of bowels or bladder to receive a deficit in this area. The Claimant clearly communicated to the RN during the PAS assessment that she is not incontinent.
- 5) The evidence and testimony regarding transferring is sufficient to support the award of one (1) deficit. Policy specifies that an individual must need at least one-person assistance to receive a deficit in this area. The Claimant reported during the 2012 PAS assessment – when the RN asked her about transferring – that she sometimes sleeps in her bed and sometimes on the couch. No further documentation was entered on the PAS to explain why the Claimant sometimes does not sleep in her bed, and the RN did not document that she explored this comment with the Claimant to determine the reason

- 6) The evidence and testimony regarding walking is not sufficient to support the award of a deficit. Policy specifies that an individual must require at least one-person physical assistance to receive a deficit in this area. The Claimant indicated that, although slow, she could walk “pretty good” with her walker in the home.
- 7) The evidence and testimony regarding medication administration is not sufficient to support the award of a deficit. Policy specifies that an individual must be incapable of administering his or her own medications. The Claimant testified that with prompting and supervision, she is able to take her own medications.
- 8) As result of the above conclusions, the Claimant has established two (2) additional deficits, and has established her continued medical eligibility for the ADW program.
- 9) The Department was not correct in its decision to terminate medical eligibility in the ADW program based on the results of the March 2012 PAS assessment.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency’s proposal to terminate the Claimant’s medical eligibility under the Title XIX ADW Program. The Department is to consider the additionally awarded deficits for vacating and transferring in determining level of care eligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant’s Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of July 2012.

**Cheryl Henson
State Hearing Officer**