



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 2531w

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

July 12, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 12, 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 fails to reveal that you continue to meet the medical eligibility requirements for the Aged/Disabled Waiver Program based on the results of your April 2, 2012 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
Comforts of Home Case Management

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1257

**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. This hearing was convened on July 12, 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
-----, Claimant's witness

Sara Birckhead, 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 April 2, 2012
- D-3 Potential Denial Notice dated April 6, 2012
- D-4 Notice of Decision dated April 24, 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 April 2012.
- 2) A Registered Nurse (RN) employed by the West Virginia Medical Institute (WVMI), Brenda Myers, completed a medical assessment (D-2) on April 2, 2012, in the Claimant's home and determined that he no longer meets the medical eligibility criteria for the program. The nurse testified that the Claimant received four (4) 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 vacating a building, bathing, grooming, and dressing.
- 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 transferring, walking, and incontinence.
- 7) In the area of transferring, the Claimant was rated as being able to transfer independently with the use of assistive devices. Policy specifies that to receive a deficit in the area of transferring, an individual must need at least one-person physical assistance to perform the function. The RN recorded the following pertinent information during the assessment:

...he pushes against furniture to assist himself to stand and did demonstrate his ability during assessment. He sleeps in a regular bed and states he uses the bed rail for support as he gets into and out [of] bed. He denies any medical devices around the toilet and states he pulls against the wall to assist himself to transfer off commode.

The Claimant stated that he was confused during the PAS assessment and may not have provided accurate information as a result. He stated that he can pull himself up with a "rail," but added that sometimes he has "trouble" and needs someone to grab hold of him and get him up. He also stated that on at least one (1) occasion he fell when he was attempting to transfer unassisted. He added that he has difficulty getting into and out of the bathtub due to having to step over the tub. The Claimant stated that he remembered the RN asking him about what type of assistance he would need if someone were in the home to assist him; he stated that he was confused at the time and did not report to her that he would need physical assistance. The Claimant's wife (-----) corroborated his testimony in regard to falling, and added that he needs physical assistance in transferring. She stated that sometimes the Claimant gets "very wobbly with his legs." The RN stated that the Claimant did not communicate that he needed physical assistance to transfer during the April 2012 PAS (D-2) assessment, and that he was getting himself out of bed with the assistive devices alone.

In the area of walking, the Claimant was rated as being able to walk with the use of assistive devices. Policy specifies that to be assessed a deficit in the area of walking, the individual must require at least one-person physical assistance. The RN documented the following during the PAS assessment:

He can walk a short distance in apartment. He does have a cane but states most of the time he will just use walls or furniture to steady himself. He did demonstrate his ability during assessment. Functional Observation: He was seated in motorized wheelchair and pushed up gently with hand and stood. He then walked several feet across the living room and back to wheelchair. He walked independently, slowly and as he neared furniture he did reach out and steadied himself. He turned and then walked back to wheelchair. While seated he can reach down with hands and touch at his ankles; He does not cross legs at ankles [sic] or knees. He can rise and extend both arms above his head and can touch the top of his head, shoulders and can extend both arms down and around to reach lower back. Grips are strong in both hands.

The Claimant stated that he can barely walk even when holding onto walls and furniture. He added that during the PAS (D-2) assessment he walked two (2) steps and back for the RN. He stated that at the time of the assessment, he did not have a homemaker. He added that if he had a homemaker at the time, he would have required physical assistance from her to walk at times.

In the area of incontinence, the Claimant was rated as being continent of both bowel and bladder. Policy specifies that to be assessed a deficit in the area of incontinence, an individual must be totally incontinent. The RN documented the following on the PAS:

He denies incontinence with bowels or bladder and denies use of incontinence supplies. He states the only need he sometimes has is help with wiping after a bowel movement.

The RN explained that the Department considers an individual to be incontinent of either bowel or bladder if they have at least three (3) incidents of incontinence weekly. The Claimant and his wife both stated that he has incontinence of both bowel and bladder at least three (3) times weekly. In explaining why the Claimant did not report this to the RN during the PAS (D-2) assessment, they both indicated that he was too embarrassed. The RN stated and documented on the PAS (D-2) that at the beginning of her assessment she explained the importance of open disclosure of health and functional abilities and that the information obtained would be used to determine program eligibility as well as level of care. She added that the Claimant did not report any bowel or bladder incontinence during the PAS (D-2) assessment.

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 four (4) deficits during the April 2012 PAS assessment, in the areas of vacating during an emergency, bathing, grooming, and dressing. He must be assessed one (1) additional deficit in order to be determined medically eligible for the

program. The Claimant contested the ratings he received in the areas of transferring, walking, and incontinence.

- 3) The evidence and testimony regarding transferring is insufficient to support the award of a deficit. Policy specifies that an individual must need one-person physical assistance with transferring in order to receive a deficit in that area. The Claimant clearly did not communicate a need for at least one-person physical assistance at the time of the April 2012 PAS (D-2) assessment.
- 4) The evidence and testimony regarding walking is insufficient to support the award of a deficit. Policy specifies that an individual must need at least one-person physical assistance with walking in order to receive a deficit in that area. The Claimant again clearly did not report a need for at least one-person physical assistance for walking at the time of the April 2012 PAS (D-2) assessment, and the evidence shows he was walking with assistive devices at that time.
- 5) The evidence and testimony regarding incontinence is insufficient to support the award of a deficit. Policy specifies that an individual must be incontinent of either bowel or bladder in order to receive a deficit. The RN testified that the Department considers a person to be incontinent if they have three (3) or more episodes of incontinence [accidents] weekly. The Claimant clearly reported that he was continent of both bowel and bladder during the April 2012 PAS assessment. The Claimant and his wife stated during the hearing that he is incontinent of both bowel and bladder, and that he reported otherwise out of embarrassment during the April 2012 PAS (D-2) assessment. The evidence shows the Claimant was sufficiently informed (D-2) of the need to provide accurate information and that the information provided would be used to determine eligibility; therefore, his choice to refrain from reporting information about his incontinence was an informed one.
- 6) As result of the above conclusions, the Claimant has established no additional deficits, and has not established medical eligibility for the ADW program.
- 7) The Department was correct in its decision to terminate medical eligibility in the ADW program based on the results of the April 2012 PAS assessment.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's medical eligibility under the Title XIX ADW Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of July 2012.

**Cheryl Henson
State Hearing Officer**