



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

October 25, 2012

Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 18, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits 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 medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
----, LLC
BoSS
WVMI

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

IN RE: ----,

CLAIMANT,

v.

ACTION NO.: 12-BOR-1995

**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 on October 18, 2012, on an appeal filed August 8, 2012.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

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

----, owner, ----

----, Homemaker, ----

Kay Ikerd, RN, Bureau of Senior Services

Sarah "Betsy" Carpenter, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a 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 benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501.5, 501.5.1 and 501.5.1.1

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) completed on July 12, 2012
- D-3 Potential Denial Notice dated July 13, 2012
- D-4 Aged/Disabled Waiver Program Medical Necessity Evaluation Request
- D-5 Notice of Decision dated July 30, 2012
- D-6 Pre-Admission Screening (PAS) completed on August 24, 2011

Claimant's Exhibits:

- C-1 Letter from ---- dated July 16, 2012
- C-2 Documentation from ----, dated July 18, 2012
- C-3 Aged/Disabled Waiver Program Member Assessment dated June 10, 2012, and Plan of Care for June 2012-December 2012

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Medicaid Program and underwent an annual medical evaluation to determine if he continues to meet medical eligibility criteria for the program.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Sarah "Betsy" Carpenter completed a Pre-Admission Screening (PAS) medical assessment on July 12, 2012 (D-2), and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits four (4) qualifying functional deficits- physical inability to vacate the building in the event of an emergency, and physical assistance with bathing, dressing and grooming.
- 3) On July 13, 2012, the Department sent the Claimant a Potential Denial Notice (D-3), advising him that he had two weeks to submit additional medical information for consideration. The

Claimant provided Exhibits C-1 and C-2 for consideration, however, the documentation failed to alter the PAS findings.

- 4) The Claimant was sent a final Notice of Decision on July 30, 2012 (D-5).
- 5) The Claimant and his witnesses contended that he should be awarded additional functional deficits in the following areas:

Physical assistance with eating- ----, owner of ----, testified that the Claimant only has two fingers on his right hand (his dominant hand) and it would be difficult for him to cut up foods. A letter from ----, M.D., dated July 18, 2012 (C-2), had been submitted to the Department as additional information in response to the Potential Denial Notice. In the letter, the physician stated she believes the Claimant would require assistance with cutting up foods.

The WVMi Nurse testified that the Claimant reported the ability to feed himself and cut up his own foods during the PAS assessment. She stated that she observed him completing various tasks with his hands during the assessment – including manipulating a pen, opening a safety-locked prescription bottle and unfolding paper – and believes that he would be capable of cutting up his own foods. The nurse reviewed the information provided by Dr. ----, but did not change her PAS findings because she believes that the Claimant has sufficient dexterity to cut his food based on her own observations and his statements.

Ms. ----, who was present during the PAS, contended that the bottle the Claimant opened on the date of the assessment was not a child-proof prescription bottle, as the pharmacy does not give the Claimant that type of medication container.

Inability to administer medication- Ms. ---- testified that the Claimant's homemaker administers his insulin (possibly during non-work hours), however this information was not available at the time of the assessment. The homemaker, ----, stated that the Claimant was struggling to administer his own insulin, and his needle would often bend, resulting in self-injury.

The WVMi Nurse testified that the Claimant reported the ability to put pills into his mouth, and administer his own insulin on the date of the assessment.

Incontinence of bowel and bladder- Ms. ---- testified that the Claimant is incontinent of bladder and bowel more frequently than he admitted during the assessment. She stated that the Claimant is very proud and did not reveal the true frequency of incontinence due to embarrassment. The Claimant testified during the hearing that he is incontinent of bowel and bladder at least three times per week.

The WVMi Nurse testified that the Claimant indicated he uses incontinence supplies, but stated he had not been incontinent of bowel in the seven days prior to the PAS. He reported that he had experienced two episodes of bladder incontinence in the same seven-day period. A letter from Ms. ---- (C-1) submitted as additional information in response to the Potential Denial letter, states that the Claimant experiences two episodes of bowel incontinence per month, and

an Aged and Disabled Waiver Member Assessment (C-3) completed on June 10, 2012, states that the Claimant is partially incontinent of bowel and bladder. It should be noted that the Medical Necessity Evaluation Request (D-4) includes a diagnosis of incontinence, but does not specify a frequency. The Department's witnesses indicated that an individual must be incontinent of bowel and/or bladder at least three times per week in order to be considered totally incontinent and receive a deficit in this functional area.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (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 nursing home level of care.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (D-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 501.5.1.1 (D-1):

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 B (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) 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. The Claimant was awarded four (4) deficits on his July 2012 Aged/Disabled Waiver Program medical evaluation.
- 2) As a result of information provided during the hearing, no additional deficits are awarded to the Claimant. The Claimant reported during the assessment that he could cut up his own foods, and prepare and administer his own insulin. In addition, he reported fewer than three bladder/bowel incontinent episodes per week.
- 3) As no additional deficits can be awarded, the Claimant continues to lack the required deficits for continued participation in the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's benefits 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 25th Day of October 2012.

Pamela L. Hinzman
State Hearing Officer