



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

October 23, 2012

Dear -----:

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 Medicaid 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 (HCB) Title XIX Waiver Services program is based on current policy and regulations. These regulations provide that the 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]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver program.

The information which was submitted at your hearing revealed that you do not meet the medical eligibility requirements of the program.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review
[REDACTED] Senior Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-2027

**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 fair hearing convened October 18, 2012, on a timely appeal, filed August 17, 2012.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program (ADW) 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

-----, Attorney-In-Fact

-----, Claimant's husband

-----, Claimant's witness

Kay Ikerd, RN, Bureau of Senior Services (BoSS), Department representative

Lee Ann Beihl, RN, West Virginia Medical Institute (WVMI), Department witness

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department is correct in its proposal to terminate the Claimant's medical eligibility for benefits and services under the Aged and Disabled Waiver program.

V. APPLICABLE POLICY:

Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening dated July 18, 2012
- D-3 Notice of Potential Denial dated July 23, 2012
- D-4 Notice of Decision dated August 14, 2012
- D-5 Pre-Admission Screening dated September 6, 2011

VII. FINDINGS OF FACT:

- 1) On July 18, 2012, Lee Ann Beihl, RN, West Virginia Medical Institute (WVMI), medically assessed the Claimant to determine her continued eligibility for the Aged and Disabled Waiver (ADW) program using the Pre-Admission Screening (PAS) assessment tool (Exhibit D-2).
- 2) Aged and Disabled Waiver Policy (Exhibit D-1) specifies that "an individual must have five deficits as described on the PAS to qualify medically for the ADW program."
- 3) During the assessment, Ms. Beihl identified functional deficits for the Claimant as vacating a building, bathing, grooming and dressing.
- 4) On July 23, 2012, the Claimant was issued a Notice of Potential Denial (Exhibit D-3). This exhibit documents in pertinent part:

At your request, a WVMI nurse recently visited you and completed an assessment to determine medical necessity for Medicaid's Aged and Disabled Waiver Program.

Medical necessity is based on information you provided to the nurse, which was documented on a form called the Pre-Admission Screening Form or PAS.

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.

Based on your PAS, you have deficiencies in only 4 areas-vacate a building, bathing, grooming and dressing.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding her medical condition to WVMI within a two week timeframe from the date of the issuance of the notice.

- 5) On August 14, 2012, the Claimant was issued a Notice of Decision (Exhibit D-4) informing her that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents 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 the 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, grooming and dressing.

- 6) The Claimant's representatives contended that an additional deficit should have been awarded in the area of orientation.

The following addresses the contested area:

Orientation-Ms. Beihl assessed the Claimant at Level 2, Intermittent Disoriented and documented in the PAS that the Claimant was, "alert during PAS; knows self and family; does not know year, president, or place." Kay Ikerd, RN, Bureau of Senior Services, testified that a deficit is awarded for orientation when the individual is assessed at a Level 3 or higher meaning that the individual is disoriented to person, place and time. -----, Claimant's Attorney-In-Fact, testified that her mother was in a good condition on the day of the assessment, but could not

recognize family members the next day. ----- indicated that her mother has experienced frequent periods of confusion and disorientation which have resulted in increased sleep for the Claimant. ----- indicated that her mother experiences depression, but has not been prescribed any medications for the condition. -----, Claimant's witness, testified that she assisted the Claimant for a week in September while ----- was on vacation. ----- testified that during that timeframe, the Claimant was disoriented on a daily basis. Ms. Beihl indicated that she assessed the Claimant as intermittently disoriented because the Claimant was alert during the assessment and knew herself and family, but did not know the year or the president. Ms. Beihl indicated that since the Claimant was alert to her person, she was not totally disoriented. Additionally, the Claimant's physician submitted information which documented "[Claimant] has dementia which interferes with her activities of daily living." Ms. Beihl indicated that she reviewed the information, but did not change her findings on the assessment concerning the Claimant's condition.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (Exhibit 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.

8) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1– 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 ADW 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.

9) 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) Policy requires that in order to be determined eligible for services under the Aged and Disabled Waiver program, an individual must be deficient in at least five health areas on the Pre-Admission Screening assessment (PAS).
- 2) During the medical assessment, the Claimant demonstrated functional deficits in the areas of vacating a building, bathing, grooming and dressing.
- 3) The matter before the Board of Review is whether or not the WVMI nurse correctly assessed the Claimant's functional abilities based on information reported at the time of the assessment.
- 4) The evidence does not support that a deficit should be awarded in the area of orientation. During the PAS completed July 2012, the Claimant was assessed at Level 2, intermittently disoriented, because she was alert and oriented to person but not to place and time. Policy requires that a deficit is awarded in the contested area when the individual is assessed at Level 3 or higher meaning the individual is totally disoriented or comatose. Because the Claimant was not totally disoriented during the assessment, the WVMI nurse correctly assessed the

Claimant as intermittently disoriented and an additional deficit in the contested area cannot be awarded.

- 5) Evidence presented during the hearing revealed no additional deficits. The Claimant's total number of deficits for medical eligibility is four; therefore, the Department was correct in its decision to terminate the Claimant's medical eligibility for the Aged and Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to terminate the Claimant's medical eligibility under 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 _____ day of October 2012.

Eric L. Phillips
State Hearing Officer