



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

December 4, 2012

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Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law for your hearing held on November 30, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Medicaid 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 the hearing demonstrates that you continue to need the degree of care required to medically qualify for the Aged/Disabled Home and Community-Based Waiver Services Program.

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to terminate your benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
BoSS/WVMI

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

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**Claimant,**

v.

**Action Number: 12-BOR-2230**

**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 convened telephonically on November 30, 2012, on a timely appeal filed September 11, 2012. Benefits and services provided through the Medicaid Aged and Disabled Waiver Program 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

----, Case Manager, ----, Claimant's witness

Kay Ikerd, RN, BoSS – Department's representative

Sarah "Betsy" Carpenter, RN, WVMI – Department's witness

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its proposal to terminate the Claimant's benefits and services provided through the Medicaid Aged/Disabled Home and Community-Based Waiver Services Program.

**V. APPLICABLE POLICY:**

Medicaid Aged/Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

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

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Waiver Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 8/14/12
- D-3 Notice of Potential Denial dated 8/15/12
- D-4 Notice of Decision dated 8/31/12
- D-5 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 9/12/11

**Claimant's Exhibits:**

- C-1 Correspondence from ----, MD, dated August 17, 2012

**VII. FINDINGS OF FACT:**

- 1) On August 14, 2012, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged and Disabled Waiver Services Program, hereinafter ADW Program. (See Exhibit D-2, Pre-Admission Screening (PAS), completed on 8/14/12).
- 2) On or about August 15, 2012, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

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, Chapter 501.3.2.

Based on your PAS you have deficiencies in only 4 areas – Vacate a Building, Bathing, Grooming and Dressing.

This notice goes on to advise the Claimant that additional medical information would be considered if received within two weeks.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated August 31, 2012 (Exhibit D-4). This notice states, in pertinent part:

The West Virginia Medical Institute (WVMI) recently conducted an assessment of your medical eligibility for the Aged and Disabled Waiver Program. You have been determined medically ineligible for Waiver services.

This decision results in the denial or termination of your Waiver services. This is based on policy in the Medicaid program regulations, Aged and Disabled Waiver Policy Manual, Section 501.5.1.1 and the Pre-Admission Screening (PAS) Form (attached).

**Reason for Decision:** Medical eligibility for the Aged and Disabled Waiver Program requires deficits in at least five (5) of the health areas listed below. This section indicates that deficits were identified in the following areas: Vacate a Building, Bathing, Grooming and Dressing.

Your Pre-Admission Screening Form (PAS) indicates deficiencies in four (4) areas. Because you have less than five (5) deficits, you are not medically eligible for the Aged and Disabled Waiver Program.

- 4) As noted in the previous finding, the Department stipulated that the Claimant demonstrates four (4) deficits (vacating, bathing, grooming and dressing). The Department, however, maintained that the medical assessment completed in August 2012 by Betsy Carpenter, RN, West Virginia Medical Institute (WVMI), fails to identify five (5) functional deficits.
- 5) The Claimant and her witness contended that she remains medically eligible to participate in the ADW Program, as she should have been awarded a deficit in eating. The following will address the contested area of eating:

**Eating** – Pursuant to the Medicaid regulations, an individual must require physical assistance (Level 2 or higher) to get nourishment (food preparation is not considered) in order to qualify for a functional deficit in eating. The Claimant alleged that she reported having tremors to RN Carpenter and that she was unable to cut her food. She further purported that the tremors are not constant, but she never knows when they are going to occur. The Claimant submitted Exhibit C-1 to verify that she developed tremors following an allogeneic stem cell transplant in May 2012, and while Exhibit C-1 was not submitted timely, this document was accepted into evidence because it was drafted by the Claimant’s physician within the two-week period following the medical assessment. RN Carpenter proffered testimony to indicate the Claimant reported she could feed herself independently and cited her documentation in Exhibit D-2, page 7 of 8, wherein the Claimant denied requiring any special utensils and reported she could cut her own food. RN Carpenter acknowledged that the Claimant reported having tremors when discussing medication administration (Exhibit D-2, page 8 of 8), but stated, “As long as I don’t have tremors, I can do it myself.”

An individual's self-reported functional ability is given a great deal of weight when determining if a functional deficit should be awarded. Upon considering the evidence, and a thorough review of RN Carpenter's documentation, the Claimant's testimony that she reported the inability to cut her food is unconvincing. However, because the Claimant reported she had tremors during the assessment, and her verified medical condition frequently creates a barrier for her to self-administer medications, it is reasonable to believe this condition would render her unable to safely cut her food. As a result, the Claimant was demonstrating a functional deficit in eating (Level 2) at the time of the assessment.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (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 NF Level of Care.

7) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 – 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 501.3.2 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) Medicaid policy requires that an individual must demonstrate five (5) functional deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded four (4) functional deficits on a PAS completed by WVMI in August 2012 – vacating a building [in the event of an emergency], bathing, grooming and dressing.
- 3) Evidence presented at the hearing confirms the Claimant was demonstrating a functional deficit in the area of eating (Level 2) at the time of the assessment.
- 4) Whereas the Claimant was demonstrating five (5) program qualifying functional deficits at the time of the assessment, evidence confirms that she continues to be medically eligible to participate in the Medicaid Aged/Disabled Waiver Program.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to terminate the Claimant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_ Day of December 2012.**

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**Thomas E. Arnett  
State Hearing Officer  
Member, Board of Review**