



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

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

January 4, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 3, 2012. Your hearing request was based on the Department of Health and Human Resources' decision 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 meet the medical eligibility requirements for the Aged and Disabled Waiver program.

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

Sincerely,

Eric Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Kay Ikerd, BoSS  
Senior Life Services of Morgan County

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-2325**

**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 on a timely appeal, filed October 26, 2011.

It should be noted here that the Claimant's benefits under the Aged and Disabled 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, hereinafter 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  
-----, Claimant's Attorney-In-Fact  
-----, Case Manager-Senior Life Services of Morgan County  
Kay Ikerd, RN, Bureau of Senior Services (BoSS)  
-----, RN, West Virginia Medical Institute (WVMI)

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 Assessment dated October 3, 2011
- D-3 Notice of Potential Denial dated October 4, 2011
- D-4 Notice of Decision dated October 20, 2011
- D-5 Letter from [REDACTED] Medical Associates dated October 12, 2011

**VII. FINDINGS OF FACT:**

- 1) On October 3, 2011, Ms. -----, RN-West Virginia Medical Institute (WVMI) medically assessed the Claimant to determine his continued eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) During the assessment, ----- identified the Claimant's functional deficits as vacating a building, bathing, grooming, and dressing.
- 3) On October 4, 2011, the Claimant was issued Exhibit D-3, Notice of Potential Denial. 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 his medical condition to WVMi within a two week timeframe from the date of the issuance of the notice.

- 4) On October 20, 2011, the Claimant was issued Exhibit D-4, Notice of Denial, informing him 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-vacating a building, bathing, grooming, and dressing.

- 5) The Claimant's representatives contend that additional deficits should have been awarded in the areas of walking and transferring. Ms. Kay Ikerd, RN, Bureau of Senior Services presented a letter (Exhibit D-5) dated October 12, 2011 from [REDACTED] Medical Associates which indicates the Claimant's abilities in the contested areas as:

I have seen [REDACTED] for sometime [sic] in my practice and he has been under Senior Life Services for home visits and he was recently told that he may be terminated from the program.

It is my hope that your Senior Life Services can continue to come to the home to care for ----- as he has had [sic] deteriorating condition. He is currently oxygen for orthopenea and hypoxia, which is well documented. He has also had several falls in the past three months and has had difficulty getting up the floor [sic] without assistance. At times, he has been 100% assist. Also, the patient would greatly benefit from physical therapy in the home if your agency would be able to provide that. Of note, the patient is also being treated for atrial fibrillation, CVA, diabetes, and coronary artery disease.

During the assessment, ----- assessed the Claimant as a Level 2, regarding his ability to ambulate and documented the following in Exhibit D-2 concerning her assessment “[Claimant] demonstrated walking with cane; poor balance; unsteady gait; increased sob [sic] noted.” Additionally, ----- documented that “He [Claimant] has not been hospitalized since last PAS; was seen 9/11 for fall in ED.” Testimony revealed that the assessment level did not meet the requirements for a deficit in the area of walking.

----- testified that she had not been privy to Exhibit D-5, prior to the hearing and indicated the individuals present during the assessment failed to inform her of the Claimant’s requirement for assistance when he experiences a fall. ----- indicated that had she been privy to the Claimant’s need for assistance after a fall, she would have awarded deficits in the areas of transferring and walking.

The Claimant’s Attorney-In-Fact provided testimony regarding the Claimant’s falls, but was unsure of the timeframe of each occurrence. Ms. ----- provided testimony that she met with the Claimant on October 5, 2011, and was informed by the Claimant of his fall on September 25, 2011, which resulted in a hospital visit on September 26, 2011. ----- stated that the Claimant reported bruising of the left hip, increased instability in ambulation, and increased dyspnea. ----- testified that the Claimant has edema and pain in his lower extremities which results in a fluctuation of his ambulation and she believes that the Claimant requires assistance after a fall.

Policy requires that a deficit is awarded the areas of walking and transferring when the individual is assessed as a Level 3 or higher meaning that the individual requires a minimum of one-person assistance to aide in their functional abilities. During the assessment, the assessing nurse documented the Claimant’s recent fall and his unsteady gait. However, submitted evidence establishes a timeframe, before the assessment, in which the Claimant experienced multiple falls and required full assistance to aide him. Because the Claimant requires assistance, due to falling, a deficit can be awarded in the areas of walking and transferring.

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– 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.

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) Policy dictates that 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) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the areas of vacating a building, bathing, grooming, and dressing.
- 3) Testimony and evidence presented during the hearing revealed additional deficit in the area of walking and transferring.
- 4) The Claimant's total number of deficits awarded is six; therefore, the Department was incorrect in its decision to terminate the Claimant's Aged and Disabled Waiver benefits.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate the Claimant's Aged and Disabled Waiver benefits.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of January , 2012.**

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**Eric L. Phillips**  
**State Hearing Officer**