



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

February 14, 2012

-----  
-----  
-----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 14, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny 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 for the Aged and Disabled Waiver program.

It is the decision of the State Hearing Officer to Uphold the action of the Department to deny 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, RN-Bureau of Senior Services

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

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

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-2529**

**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 November 21, 2011.

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, 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 representative

Kay Ikerd, RN-Bureau of Senior Services (BoSS)

Paula Clark, 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 was correct in its decision to deny 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 18, 2011
- D-3 Notice of Potential Denial dated October 20, 2011
- D-4 Notice of Denial dated November 7, 2011

**VII. FINDINGS OF FACT:**

- 1) On October 18, 2011, Ms. Paula Clark, RN-West Virginia Medical Institute (WVMI) medically assessed the Claimant to determine her medical eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) During the assessment, Ms. Clark identified the Claimant's functional deficits as vacating a building, bathing, grooming, and dressing.
- 3) On October 20, 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 her medical condition to WVMi within a two week timeframe from the date of the issuance of the notice.

- 4) On November 7, 2011, the Claimant was issued Exhibit D-4, Notice of Denial, 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-vacating a building, bathing, grooming, and dressing.

- 5) The Claimant's representatives contend that additional deficits should have been awarded in the areas of eating, continence, orientation, transferring, and medication administration.

The following addresses the contested areas:

**Eating**-Testimony indicated that the Claimant has difficulties with cooking and cleaning, but has the ability to prepare simple meals such as peanut butter sandwiches. Ms. Clark assessed the Claimant as a Level 1 Self/Prompting and documented in the PAS assessment that the Claimant reported, "she is able to feed herself and is able to cut up her food herself. Applicant reports she is not able to grocery shop to get her food into her home."

Policy requires that in order to award a deficit in the contested area the applicant must be assessed as a Level 2 or higher meaning that the individual requires physical assistance to get nourishment. Policy documents that preparation is not included in the determination of a deficit. Testimony revealed that the Claimant was able to feed herself and only experiences difficulties with preparation of her meals. Based on information available at the assessment, the assessing nurse correctly assessed the Claimant and an additional deficit **cannot** be awarded in the contested area.

**Continence**-Testimony indicated that the Claimant is receiving treatment for incontinence from her physician, but failed to indicate the type of prescribed treatment. Ms. Clark assessed the

Claimant as occasionally incontinent and documented in the PAS assessment that the “applicant reports she has accidents with her bladder about twice in the past month. Applicant denies wearing pull ups or pads. Applicant reports she has had about 3 accidents with her bowels in the past month.”

Policy requires that in order for a deficit to be awarded in the contested area the individual must be assessed as a Level 3 or higher meaning that the individual experiences three or more weekly episodes of incontinence or be totally incontinent. Information reported during the assessment and hearing process failed to meet the minimum requirements for a determination of a deficit in the area of continence. Therefore, the assessing nurse correctly assessed the Claimant and an additional deficit in the contested area **cannot** be awarded.

**Orientation**-The Claimant’s representative believed that the Claimant was having a good day on the day of the assessment, but indicated the Claimant experiences difficulties with her short-term memory. Ms. Clark documented her findings as, “applicant denies forgetting who she is, where she is at, or who people are she sees on a regular basis. Applicant was able to tell me her birthday, SS#, phone #, address, the day of the week, the month, and the day of the month, the year, and the president. Applicant was able to sign and date her consent form correctly.”

Policy requires that in order to award a deficit in the contested area, the individual must be assessed as a Level 3 or higher meaning that the individual is totally disoriented or comatose. During the assessment the Claimant was aware of her surroundings and demonstrated no effects of disorientation; therefore, the assessing nurse correctly assessed the Claimant as oriented and a deficit cannot be awarded in the contested area.

**Transferring**-The Claimant’s representative testified that the Claimant is reliant on a power wheel chair and requires assistance with transferring in and out of the chair. The assessing nurse assessed the Claimant as a Level 2 requiring supervision or an assistive device and documented the following in the PAS assessment, “Applicant demonstrated she is able to stand by pushing to her arms of her w/c. Applicant held to [sic] her table beside her to steady herself.”

Policy requires that in order to award a deficit in the contested area, the individual must be assessed as a level three or higher meaning that the individual requires one or two-person assistance in the home to aide in their abilities. On the day of the assessment, the Claimant demonstrated her ability to transfer from her wheelchair without assistance and reported no difficulties with her ability to transfer. Therefore, the assessing nurse correctly assessed the Claimant and a deficit cannot be awarded in the contested area.

**Medication Administration**-The Claimant’s representative testified that the Claimant requires assistance to place medications on her back. The assessing nurse stated that the Claimant did not report the use of cream medications and did not provide a list of her prescribed medications during the assessment. The assessing nurse documented her findings in the PAS assessment as, “Applicant reports she is able to put her medications in her mouth herself but states she forgets to take her medications and need reminded. Applicant reports she does not have to remind her

to take her medications. Applicant reports her medications are at her mother's home and she does not have them available for the assessment.”

Policy requires that in order to award a deficit in the contested area, the individual must be incapable of administering their own medications. During the assessment, the Claimant indicated that she was able to take her own medications with prompting and failed to report the use of medications for her back. Because the Claimant is able to administer her own medications, the assessing nurse correctly assessed the Claimant and an additional deficit in the contested area cannot be awarded.

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 failed to establish additional deficits.
- 4) The Claimant's total number of deficits in four; therefore, the Department was correct in its decision to deny the Claimant's application for Aged and Disabled Waiver benefits.

### IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny the Claimant's application for 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 February, 2012.**

---

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