



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

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

February 27, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on February 10, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny your medical eligibility for 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 Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged and 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 homes where services can be provided. [Aged and Disabled (HCB) Services Manual Section 501]

Information submitted at your hearing reveals 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 proposal of the Department to deny your application for the Aged and Disabled Waiver Program.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services

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

IN RE: -----,

Claimant,

v.

ACTION NO: 11-BOR-2606

**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 concluded on February 27, 2012 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 conducted by telephone conference call on February 10, 2012, on a timely appeal filed November 30, 2011.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (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's Sister and Representative

-----, Claimant

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Anna Matney, RN, West Virginia Medical Institute, Department's Witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to deny Claimant's application for the Aged and Disabled Home and Community-Based Waiver Program based on a Pre-Admission Screening (PAS) conducted on October 25, 2011.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community-Based Services Manual Section 501.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community-Based Services Manual Section 501.5.
- D-2 Pre-Admission Screening (PAS) assessment conducted on October 25, 2011.
- D-3 Potential denial letter from APS Healthcare, dated October 31, 2011
- D-3 Denial letter from APS Healthcare, dated November 15, 2011.

VII. FINDINGS OF FACT:

- 1) Claimant was an applicant for the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of the application process, a nurse from the West Virginia Medical Institute (WVMI) performed a Pre-Admission Screening (PAS) in Claimant's home on October 25, 2011. (Exhibit D-2.)
- 2) Aged and Disabled Home and Community-Based Services Waiver Policy Manual Section 501.5.1.1 (Exhibit D-1) MEDICAL CRITERIA states in pertinent part:

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.

- 3) Department's witness testified that she conducted the PAS (Exhibit D-2) on October 25, 2011 in the Claimant's home. She stated that the Claimant and she were the only persons present for the assessment session. She added that she assessed Claimant with three (3) deficits on the PAS, for grooming, dressing and continence, and therefore Claimant did not meet the medical eligibility criteria for the Program.
- 4) The Department issued a Notice of Potential Denial dated October 31, 2011. (Exhibit D-3.) This notice stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WVMJ within the next 2 weeks." The PAS did not indicate that the Department received any additional medical information from Claimant's physician or any other information source. The Department sent a Notice of Termination/Denial to Claimant on November 15, 2011. (Exhibit D-4.)
- 5) Claimant's representative asserted that Claimant should have received two additional deficits on the October 25 PAS, in the area of vacating a building during an emergency and bathing.

- 6) ***Vacating a building during an emergency:*** On the October 25 PAS (Exhibit D-2) at item #25, “In the event of an emergency, the individual can vacate the building,” the WVMI nurse assessed the Claimant “Independently,” which is not sufficient to award a deficit. She wrote in the “Nurse’s overall comments” section of the PAS, “[Claimant] says he can go down the front steps [of his home] to vacate. He says he holds to the banisters to go down them without help.” Claimant’s representative asserted that in the event of an emergency, Claimant could not vacate his home quickly due to his girth. She added that the issue he would face in an emergency would be his ability to vacate in a short enough time to protect himself. Department’s witness testified that she asked him if he could get out of the home by himself. She stated there were eight steps from his front door down to his yard, and two steps from his back door down to his yard. She added that he told her he could go down the front steps alone by holding to the step banisters and using his cane. Claimant testified during the hearing that he could vacate his home in an emergency by going down his front steps using the banisters and his cane.
- 7) ***Bathing:*** On the October 25 PAS (Exhibit D-2) at item #26-b, bathing, the WVMI nurse assessed the Claimant “self/prompting,” which is not sufficient to award a deficit. She wrote in the “Nurse’s overall comments” section, “[Claimant] uses a regular tub with a shower. He holds onto the walls to get in and out of the shower. [Claimant] states once in, he can wash all areas himself. I asked if anyone ever had to help him bathe and he said, ‘No, not so far.’ ” Claimant’s representative asserted that Claimant cannot get into or out of the bath. She stated that Claimant may have been embarrassed to tell the assessing nurse, but that he refuses to bathe because he is afraid he may fall. She added that her sister had to come to the home to help Claimant take a bath. Department’s witness testified that Claimant told her directly that he could get into and out of the bath by holding onto the walls of the bathroom.

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 and Disabled Waiver Program. On his PAS that was performed on October 25, 2011, Claimant obtained three (3) deficits.
- 2) Claimant’s representative argued that two additional deficits should have been assessed in the area of vacating a building during an emergency and bathing.
- 3) The Department was correct in its decision not to assess a deficit in the area of vacating a building during an emergency. Claimant stated during the hearing that he was able to get down the front steps of his home by using the banister and a cane.
- 4) The Department was correct in its decision not to assess a deficit in the area of bathing. Department’s witness testified and recorded on the PAS that Claimant told

her he was able to get into and out of his bathtub by holding onto his bathroom wall.

- 5) Claimant's representative did not provide testimony or evidence to support a finding that additional deficits should have been awarded on the assessment; therefore, the required five (5) deficits have not been established to meet medical eligibility criteria for the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny Claimant's application for 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 27th Day of February, 2012.

**Stephen M. Baisden
State Hearing Officer**