



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 24, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 10, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical 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 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 home 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 terminate your participation in 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  
-----, Coordinating Council for Independent Living, [REDACTED] WV

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

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

**Claimant,**

**v.**

**ACTION NO: 11-BOR-2611**

**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 conducted by telephone conference call on February  
10, 2012, on a timely appeal filed November 28, 2011.

**II. PROGRAM PURPOSE:**

The Aged and Disabled Waiver (ADW) Program is defined as a long-term care  
alternative that provides services enabling 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  
-----, Coordinating Council for Independent Living, Claimant's Representative  
-----, WV Choice, Claimant's Witness  
-----, RN, WV Choice, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative  
Kathy Gue, 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 terminate Claimant's participation in the Aged and Disabled Home and Community-Based Waiver Program based on a yearly Pre-Admission Screening (PAS) conducted on October 26, 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 26, 2011.
- D-3 Pre-Admission Screening (PAS) assessment conducted on August 3, 2010.
- D-4 Potential denial letter from APS Healthcare, dated October 28, 2011.
- D-5 Denial letter from APS Healthcare, dated November 22, 2011.

**VII. FINDINGS OF FACT:**

- 1) Claimant was a participant in the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of her continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in her home on October 26, 2011. (Exhibit D-2.)
- 2) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.5.1 (Exhibit D-1) MEDICAL CRITERIA states in pertinent part:

An individual must have five (5) deficits on the Pre Admission Screening (PAS), Attachment 14, 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)

Contenance (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 26, 2011 in the Claimant's home. She stated that the Claimant, Claimant's homemaker and she were the only persons present. She added that she assessed Claimant with three (3) deficits on the PAS, for bathing, grooming and dressing, and therefore she did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department issued a Notice of Potential Denial dated October 28, 2011. (Exhibit D-4.) This notice stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WVMI within the next 2 weeks." The PAS indicates that the Department received additional medical information, but this information did not justify the awarding of additional deficits. The Department sent a Notice of Termination/ Denial on November 22, 2011. (Exhibit D-5.)

- 5) Claimant's representative asserted that Claimant should have received additional deficits in the areas of vacating a building during an emergency, transferring and walking.
- 6) ***Vacating a building during an emergency:*** The WVMI nurse rated Claimant at Level 2, "With Supervision," and wrote in the "Nurse's overall comments" section of the PAS, "In the event of an emergency, [Claimant] says that she thinks she could vacate the home if she is not having a bad day. She says that when she has a bad day she can't get around and it has happened 3-4 times in the past 6 months." Claimant's representative asserted that Claimant is unable to vacate her home. Claimant's witness, her Homemaker-RN, testified that in her assessment, Claimant would not be able to vacate a home in an emergency due to the pain in her legs and feet. She stated that Claimant has balance problems, especially if she gets in a hurry. She testified that there are three steps leading down at both exits to Claimant's home, and she would not be able to ambulate down those steps without someone to help her. Department's witness testified that she observed Claimant walking that day, and based on her observation she had the opinion that Claimant could vacate her home. She added that she assesses functionality for anyone for whom she is performing an assessment by observing his or her functioning on the day the assessment is taking place.
- 7) ***Transferring:*** The WVMI nurse rated Claimant at Level 2, "Supervised/Assistive Device," and wrote, "Observed [Claimant] get to a standing position by using the walker. Homemaker held to her arm but [Claimant] says that she usually gets up by herself." Claimant's representative stated that Claimant had reported her homemaker has to help her get in and out of the bathtub at all times. She asserted that Claimant's homemaker or husband has to assist her in getting into or out of her chair. Claimant's witness, her homemaker, testified that she had to help Claimant get out of chairs or the bathtub. She added that Claimant had a hard time getting up from and down into chairs. Claimant testified that she parks her power chair next to her bed at night, and if she has to use the bathroom at night, she wakes her husband to let him know she is getting up, so that he can be sure she makes it from the bedroom to the bathroom and back without falling.
- 8) ***Walking:*** The WVMI nurse rated the Claimant at a Level 2, "Supervised/Assistive Device," and wrote, "Observed [Claimant] walk with the walker. Homemaker walked with and held to her. She says she usually walks with her walker by herself, says she uses her walker 75% of the time and the rest of the time without it." Claimant's representative asserted that Claimant requires one-person assistance with walking. She stated that Claimant is unable to ambulate unless someone is there to hold onto her. She added that Claimant has problems with her feet, legs and knees. Claimant's homemaker testified that she has to hold onto Claimant when she has to walk, and Claimant can only walk a few feet before the homemaker has to help her to sit down. Claimant's Homemaker RN testified that she had observed Claimant walking and she knew Claimant could walk only a short distance before

she had to sit down. She stated that Claimant has pain in her legs and feet, and her knees sometimes “give out” on her. She added that she was concerned Claimant was at a high risk for falling if she tried to walk unassisted. Department’s witness testified that on the day of the assessment, the homemaker held onto Claimant’s arm and held to her as she walked. She testified that she asked Claimant if this assistance was something she had to have all of the time, and Claimant replied that she used her walker 75% of the time when she walked.

#### **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/Disabled Waiver Program. On her PAS that was performed on October 26, 2011, Claimant obtained three (3) deficits.
- 2) The Department was incorrect in its decision not to assess a deficit in the area of vacating a building during an emergency. Department’s witness testified and recorded on the PAS that Claimant told her she could vacate during an emergency if she was not having “a bad day.” If an emergency occurred when Claimant was having a bad day, she would not be able to vacate her home.
- 3) The Department was correct in its decision not to assess a deficit in the area of transferring. Department’s witness testified and recorded on the PAS that Claimant was able to transfer using her homemaker as support. Claimant testified that she transferred from her bed to her power chair at night when going to the bathroom.
- 4) The Department was correct in its decision not to assess a deficit in the area of walking. Department’s witness testified and recorded on the PAS that Claimant told her she walked with a walker 75% of the time. Claimant would require the assistance of at least one person at all times in order to receive a deficit for walking.
- 5) Claimant provided testimony and evidence to support a finding that one additional deficit should have been awarded in the assessment. However, 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 terminate Claimant’s participation in 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 24<sup>th</sup> Day of February, 2012.**

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**Stephen M. Baisden  
State Hearing Officer**