



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

March 26, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 22, 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
-----, RN, Allied Nursing and Community Services, Charleston, WV

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

IN RE: -----,
 Claimant,

v.

ACTION NO: 12-BOR-351

**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
22, 2012, on a timely appeal filed December 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
-----, RN, Allied Nursing and Community Services, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Brenda Myers, 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 November 16, 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 November 16, 2011.
- D-3 Potential denial letter from APS Healthcare, dated November 22, 2011.
- D-4 Denial letter from APS Healthcare, dated December 9, 2011.
- D-5 Pre-Admission Screening (PAS) assessment conducted on December 10, 2010.

VII. FINDINGS OF FACT:

- 1) Claimant was a participant in the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of his continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in his home on November 16, 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)

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 November 16, 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 four (4) deficits on the PAS, for vacating a building during an emergency, eating, grooming and dressing, and therefore he did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department issued a Notice of Potential Denial dated November 22, 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 WVMi within the next 2 weeks." The PAS indicates that the Department received no additional medical information from Claimant's physician. The Department sent a Notice of Termination/Denial to Claimant on December 9, 2011. (Exhibit D-5.)
- 5) Claimant asserted that he should have received one additional deficit, on item #26 of the PAS, for the functional ability of bathing.
- 6) **Bathing:** The WVMi nurse rated Claimant at Level 1, "Self/Prompting," for this functional ability and wrote in the "Nurse's overall comments" section of the PAS, "Member states he showers independently and gets into and out of shower by holding onto grab bar. He states he washes all of his body himself and states he sits in a shower chair and has a bath brush to wash his back and can lift legs to wash his feet and lower legs . . . He states if his back flares up he needs help and states last

week he was taking a bath and he was down in the tub and his worker had to hand him his bath brush as it was hanging up out of his reach and she handed it to him. I asked him if he washed his back himself and he stated he did so . . .” Claimant testified that at the time of the PAS, his previous homemaker had changed jobs and he had a new homemaker. He testified that because his homemaker was new, he did not feel comfortable with having her assist him with his bathing, and this was why he responded as he did in the “Nurse’s overall comments” section quoted above. Claimant added that had had taken a fall in his home not long before the PAS was conducted, and the back pain he experienced as a result of this fall made bathing difficult. Claimant’s witness, his Homemaker-RN, testified that Claimant is a proud person, and did not like to admit that he could not bathe himself. Department’s witness replied that in her assessment, nothing was presented to her to indicate that he had a new homemaker, or that Claimant did not want his new homemaker to help him bathe. She added that Claimant told her about having back problems, but that Claimant told her when his back was hurting, someone had to hand him his back brush. She added that in order to assess him with a deficit for this functional ability, he would require hands-on physical assistance at all times while bathing.

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 his PAS that was performed on November 16, 2011, Claimant obtained four (4) deficits.
- 2) 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 could get into and out of his bathtub and could bathe himself completely, but if his back were hurting, someone had to hand him a scrub brush. This does not meet the definition of physical assistance.
- 3) Claimant provided no testimony or evidence to support a finding that an additional deficit should have been awarded on the November 2011 PAS. 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 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 26th Day of March, 2012.

Stephen M. Baisden
State Hearing Officer