



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

March 7, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law for your hearing held on February 29, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Medicaid Aged/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/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged/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/Disabled (HCB) Services Manual Section 501]

Information submitted at the hearing fails to demonstrate that you continue to need the degree of care required to medically qualify you for the Aged/Disabled Home and Community Based Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
BoSS / WVMI
-----, CM, CCIL

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

-----,

Claimant,

v.

Action Number: 12-BOR-358

**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 convened on February 29, 2012 on a timely appeal filed December 23, 2011.

II. PROGRAM PURPOSE:

The 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
-----, Claimant's friend/witness
-----, CM, CCIL – Claimant's witness
Kay Ikerd, RN, BoSS – Department's representative (participated telephonically)
-----, RN, WVM I – Department's witness (participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the
State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to terminate the Claimant's benefits and services provided through the Medicaid Aged/Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged/Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 12/2/10
- D-3 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated 11/30/11
- D-4 Notice of Potential Denial dated 12/1/11
- D-5 Notice of Decision dated 12/19/11

VII. FINDINGS OF FACT:

- 1) On November 30, 2011 the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged and Disabled Waiver Services Program, hereinafter ADW Program. (See Exhibit D-3, Pre-Admission Screening (PAS), completed on 11/30/11).
- 2) On or about December 1, 2011, the Claimant was notified of Potential Denial (Exhibit D-4). This notice states, in pertinent part:

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, Chapter 501.3.2.

Based on your PAS you have deficiencies in only 3 areas – Bathing, Grooming, and Dressing.

This notice goes on to advise the Claimant that additional medical information would be considered if received within two weeks. It should be noted that there was no evidence to indicate additional information was received/reviewed.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated December 19, 2011 (Exhibit D-5). This notice states, in pertinent part:

The West Virginia Medical Institute (WVMI) recently conducted an assessment of your medical eligibility for the Aged and Disabled Waiver Program. You have been determined medically ineligible for Waiver services.

This decision results in the denial or termination of your Waiver services. This is based on policy in the Medicaid program regulations, Aged and Disabled Waiver Policy Manual, Section 501.5.1.1 and the Pre-Admission Screening (PAS) Form (attached).

Reason for Decision: Medical eligibility for the Aged and Disabled Waiver Program requires deficits in at least five (5) of the health areas listed below. This section indicates that deficits were identified in the following areas: Bathing, Grooming and Dressing.

Your Pre-Admission Screening Form (PAS) indicates deficiencies in three (3) areas. Because you have less than five (5) deficits, you are not medically eligible for the Aged and Disabled Waiver Program.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates three (3) deficits, but indicated the medical assessment completed in November 2011 by -----, RN, WVMI, fails to identify five (5) functional deficits required to establish medical eligibility for participation in the ADW Program.
- 5) The Claimant and her witnesses contended that she remains medically eligible to participate in the ADW Program, as she should have been awarded deficits in vacating the building [in the event of an emergency], eating, walking and transferring. The following will address each of the contested areas:

Vacating – Exhibit D-2 reveals that the Claimant was unable to vacate in the event of an emergency in December 2010 – “Impaired gait, use of assistive device for all ambulation, physically unable to vacate quickly in event of emergency.” Testimony and documentation proffered by -----, RN, WVMI, indicates that the Claimant uses a manual wheelchair and a rollinator (walker with wheels) to assist with ambulation in her home. RN ----- testified that the Claimant ambulated with a slow steady gait during the November 2011 assessment (D-3) and noted the Claimant reported that she feels like she is falling sometimes due to the pain and numbness in her feet related to neuropathy. Because the Claimant demonstrated that she is mentally capable of knowing how to vacate her home, RN ----- determined that the Claimant could vacate with supervision. However, testimony received at the hearing from the Claimant and her witnesses revealed that the Claimant required physical assistance from emergency responders to vacate her home during a recent fire at her apartment complex. Because there is no marked improvement in the Claimant’s ambulation from the previous medical assessment (D-2), and she has recently required physical assistance to vacate during an emergency due to limited mobility, the Claimant is demonstrating a functional deficit in vacating.

Eating – The Claimant was identified at a level 2 (requires physical assistance) when assessed in December 2010 (D-2) due to difficulty cutting up meat. The Claimant was noted to have an impaired grasp in her left hand and reported that she cannot maintain a grip with her left hand.

The Claimant reported during the assessment that she is capable of feeding herself and that she does not require any assistance with cutting her food. RN -----noted (D-3, page 6 of 9) that the Claimant’s grasp in her right hand was “moderate” and the grasp in her left hand was “moderate, but stronger than the right.” The Claimant purported that her primary concern is meal preparation and that the arthritis in her left hand sometimes limits her ability to cut food. Pursuant to Medicaid ADW Policy, meal preparation is not considered when assessing an individual’s ability to eat, and because the Claimant demonstrated the ability to grasp with both hands on the day of the assessment - and reported she was able to feed herself and cut her own food - the Claimant was correctly assessed at a level-1 (self/prompting) in eating. As a result, a functional deficit cannot be awarded for eating.

Walking - In order to qualify for a functional deficit in walking, the individual must require, at a minimum, hands-on physical assistance from one person. Testimony and documentation (D-3) submitted at the hearing reveals that the Claimant can ambulate in her home with the use of an assistive device (manual wheelchair and rollinator). Because there was no evidence submitted to indicate the Claimant requires one-person assistance to ambulate in her home, the Claimant is not demonstrating a functional deficit in walking (level-2).

Transferring – Pursuant to Medicaid ADW Policy, a deficit is established in transferring if the individual requires hands-on physical assistance to transfer. Testimony presented at the hearing is consistent with the findings on the PAS (D-3) – the Claimant uses the arms of her wheelchair, her walker and bedrails to assist with transferring. Whereas the Claimant does not require physical assistance from at least one person, a deficit in transferring cannot be awarded.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (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 NF Level of Care.

7) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 – 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 A/DW 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) Medicaid policy requires that an individual must demonstrate five (5) functional deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded three (3) functional deficits on a PAS completed by WVMI in November 2011 – bathing, grooming and dressing.

- 3) Evidence presented at the hearing confirms the Claimant should have been awarded one (1) additional functional deficit in the area of vacating her building in the event of an emergency.
- 4) Whereas the Claimant was demonstrating only four (4) program qualifying deficits at the time of the assessment, the evidence confirms that the Department's determination that continued medical eligibility for participation in the Aged/Disabled Waiver Program was not established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of March, 2012.

**Thomas E. Arnett
State Hearing Officer
Member, Board of Review**