



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

February 9, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 9, 2012. Your hearing request was based on the Department of Health and Human Resources' denial of your application for medical eligibility under the 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 your hearing fails to reveal that you meet the medical eligibility requirements for the Aged/Disabled Waiver Program, based on the results of your November 28, 2011 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny your application for medical eligibility for benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-360

**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 February 9, 2012.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver Program (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 representative

-----, Claimant's witness

Kay Ikerd, Department representative

Melissa Bell, Department's witness

It should be noted that the hearing was conducted via conference call.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to deny the Claimant's application for medical eligibility for benefits under the Aged/Disabled Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/ Disabled Home and Community-Based Services Manual Section 501.5
- D-2 Pre-Admission Screening (PAS) assessment completed November 28, 2011
- D-3 Notice of Potential Denial
- D-4 Notice of Decision dated December 19, 2011

Claimant's Exhibits:

- C-1 Note written on prescription pad from Claimant's physician dated February 8, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an initial evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver (ADW) Program during the month of November 2011.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), Melissa Bell, completed a medical assessment (D-2) on November 28, 2011, in the Claimant's home and determined that he does not meet the medical eligibility criteria for the program. The Claimant's Legal Representative, -----, was also present for the assessment and provided most of the answers to questions because ----- has severe hearing loss in both ears. The nurse testified that the Claimant received four (4) deficits on the Pre-Admission Screening (PAS) assessment. The Department stipulated during the hearing that the Claimant established one (1) deficit each in the areas of vacating, eating, grooming, and dressing.

- 3) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (D-1) – MEMBER ELIGIBILITY, provides in part:

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.

- 4) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (D-1) states in pertinent part:

APS Healthcare/IRG is the contracted entity that is responsibility [sic] for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services.

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW services receives an appropriate Service Level that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the State.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1, (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)
 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.

- 6) During the hearing, the WVMi nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. After listening to the WVMi nurse explain her findings, the Claimant disagreed with her conclusions, and contends that one (1) additional deficit should be awarded in the area of orientation.
- 7) For orientation, the Claimant was rated as being intermittently disoriented and no deficit was awarded. Policy specifies that to receive a deficit for orientation an individual must be totally disoriented or comatose. The nurse documented that the Claimant has dementia and recorded the following pertinent information during the assessment:

Applicant was alert and oriented during [sic] to self during assessment.
 Applicant was not oriented to time or situation. Family states applicant is disoriented at times. Applicant was unable to state date, month, or birth date.

The Claimant's representative, -----, stated that she takes care of the Claimant and that he does not know in which county he lives, but that he does know that he lives at [REDACTED]. She stated that it takes a great deal of time to explain things to him and that he often is confused. She stated that he continues to believe he is receiving the same amount of income he received while his wife was alive, and that he thinks that the family is taking his money. She stated that his wife's income stopped when she passed away, but that the Claimant does not understand this. She also added that he gets confused about his medications and believes the family is withholding certain medications from him, such as antibiotics that are only taken for a short timeframe. She stated that he doesn't comprehend that the medication is stopped and not taken constantly.

The Claimant's granddaughter, -----, stated that the Claimant knows nothing about his finances and that he accuses the family of stealing his money because they pay his bills for him. She added that he has two (2) dogs which he feeds daily, and that he does not let the family know when he runs out of dog food. She added that he gets upset because he believes the family is not purchasing items he needs even though he is forgetting to tell them of the need. The Claimant's representative presented a note (C-1) written on prescription pad and from the Claimant's physician, dated February 8, 2012, which reads:

Patient needs 24 hours of supervision and some assistance with meds
[and] general grooming.

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 (ADW) Program.
- 2) The Claimant received four (4) deficits during the November 2011 PAS assessment, in the areas of vacating, eating, grooming, and dressing. She must be assessed one (1) additional deficit in order to be determined medically eligible for the program. The Claimant contested the rating he received in the area of orientation.
- 3) The evidence and testimony regarding orientation is not sufficient to support the award of a deficit. The Claimant clearly was partially oriented during the assessment, and both the Claimant's representative and granddaughter provided testimony indicative of partial orientation. They reported the Claimant knows the name of the town in which he lives, and that he is also oriented enough to feed his dogs regularly. The note (C-1) from the Claimant's physician is non-specific and does not speak directly to the Claimant's abilities in the area of orientation. The totality of the testimony and evidence are supportive of the Claimant being intermittently disoriented and not totally disoriented or comatose.
- 4) As result of the above conclusions, the Claimant has established no additional deficits and has not established medical eligibility for the Aged/Disabled Waiver program.
- 5) The Department was correct in its decision to deny the Claimant's November 2011 application for medical eligibility in the Title XIX Aged/Disabled Waiver (ADW) Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's decision to deny the Claimant's application for medical eligibility under the Title XIX Aged/Disabled Waiver (ADW) Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of February, 2012.

**Cheryl Henson
State Hearing Officer**