



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

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

February 15, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 14, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your Medicaid 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 (HCB) Title XIX Waiver Services program is based on current policy and regulations. These regulations provide that the 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]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver program.

The information which was submitted at your hearing revealed that you do not meet the medical eligibility requirements of the program.

It is the decision of the State Hearing Officer to Uphold the action of the Department to terminate your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, Bureau of Senior Services
CCIL

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-371

**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 a timely appeal, filed December 20, 2011.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program, hereinafter ADW, 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

Kay Ikerd, RN-Bureau of Senior Services (BoSS)

Debbie Sickles, RN-West Virginia Medical Institute (WVMI)

Presiding at the hearing was Eric L. Phillips , State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department is correct in its proposal to terminate the Claimant's medical eligibility for benefits and services under the Aged and Disabled Waiver program.

V. APPLICABLE POLICY:

Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening Assessment dated November 23, 2011
- D-3 Notice of Potential Denial dated November 28, 2011
- D-4 Letter from Claimant's physician dated November 28, 2011
- D-5 Notice of Decision dated December 13, 2011
- D-6 Pre-Admission Screening dated December 22, 2010

VII. FINDINGS OF FACT:

- 1) On November 23, 2011, Ms. Debbie Sickles, RN-West Virginia Medical Institute (WVMI) medically assessed the Claimant to determine her continued eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) During the assessment, Ms. Sickles identified the Claimant's functional deficits as bathing, grooming, and dressing.
- 3) On November 28, 2011, the Claimant was issued Exhibit D-3, Notice of Potential Denial. This exhibit documents in pertinent part:

At your request, a WVMI nurse recently visited you and completed an assessment to determine medical necessity for Medicaid's Aged and Disabled Waiver Program.

Medical necessity is based on information you provided to the nurse, which was documented on a form called the Pre-Admission Screening Form or PAS.

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.

Based on your PAS, you have deficiencies in only 3 areas-bathing, grooming, and dressing.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding her medical condition to WVMH within a two week timeframe from the date of the issuance of the notice.

- 4) On December 13, 2011, the Claimant was issued Exhibit D-5, Notice of Denial, informing her that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been Terminated/Denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate/deny your homemaker and case management services. You have the right to dispute this decision and ask for a hearing.

Reason for decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form), indicated deficiencies in 3 areas-bathing, grooming, and dressing.

- 5) The Claimant contended that additional deficits should have been awarded in the areas of walking, transferring, orientation, and vacating during an emergency.

The following addresses the contested areas:

Walking-The Claimant testified to several medical problems that she experiences which inhibit her abilities, including arthritis. She indicated that she has difficulty walking due to the swelling of her feet which affects her ability to stand and evidence reveals that the Claimant has been diagnosed with contractures of the foot. Ms. Sickles documented in the PAS assessment that the Claimant utilized a single prong cane, but did not use a cane or assistance during a demonstration of her ambulation at the assessment. Ms. Sickles observed the Claimant ambulate three times during the assessment and noted that she appeared to have a slight limp.

Policy requires that in order to award a deficit in the contested area, the individual must be assessed as a Level 3 or higher meaning that the individual requires one or two-person assistance to aide in their ability to ambulate. During the assessment, the Claimant demonstrated her ability to ambulate without assistance and the Claimant provided no information concerning her difficulties with ambulation. Therefore, the assessing nurse

correctly assessed the Claimant's ability to ambulate and an additional deficit in the contested area cannot be awarded.

Transferring-The Claimant indicated that she requires assistance when transferring from some of the furniture in her home. The Claimant indicated that she can transfer when seated at her kitchen table, but cannot transfer from softer seats such as her sofa. Ms. Sickles documented her findings in the PAS assessment as, "[Claimant] used the table top of the chair in the kitchen to assist with transfers on and off of the chair, sleeps in a regular bed and uses the mattress and the night stand to assist with transfers on and off of the bed, has a chair height toilet, and uses the side of the tub to assist with transfers on and off of the toilet."

Policy requires that in order for a deficit to be awarded in the contested area, the individual must be assessed as a Level 3 or higher meaning that the individual requires one or two person assistance to aide in their ability to transfer. During the assessment the Claimant demonstrated her ability to transfer with the assistance of household furniture. There was no indication during the assessment that the Claimant requires assistance to ambulate; therefore, the assessing nurse correctly assessed the Claimant's ability to transfer and an additional deficit **cannot** be awarded in the contested area.

Orientation-The Claimant indicated some difficulties with short term memory and retaining information. Ms. Sickles noted in the assessment that the Claimant was able to state her date of birth, address, city, state, zip code, current month, and year, but was confused regarding the day of the week.

Policy requires that a deficit is awarded in the area of orientation when the individual is totally disoriented or comatose. During the assessment the Claimant was oriented to person, place, and time and did not display any affects of disorientation; therefore, the assessing nurse correctly assessed the Claimant and an additional deficit cannot be awarded.

Vacating During an Emergency-The Claimant cited some difficulties with ambulation on stairs and becoming apprehensive when ambulating on surfaces that aren't level. Ms. Sickles documented that the Claimant was physically able to vacate in the event of an emergency and noted that the Claimant reported she was able to independently go down steps unassisted. Additionally, Ms. Sickles documented that the Claimant reported at the assessment that she would be able to vacate without assistance.

Policy requires that a deficit is awarded in the contested area when the individual is mentally or physically unable to vacate a building during an emergency. During the assessment, the Claimant indicated that she would be able to vacate her residence during an emergency; therefore, the assessing nurse correctly assessed the Claimant's ability and an additional deficit cannot be awarded in the contested area.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (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 nursing home level of care.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1– 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 ADW 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) Policy requires that to be determined eligible for services under the Aged and Disabled Waiver program, an individual must be deficient in at least five health areas on the Pre-Admission Screening assessment (PAS).
- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the areas of bathing, grooming, and dressing.
- 3) Testimony and evidence presented during the hearing did not reveal any additional deficits.
- 4) The Claimant's total number of deficits awarded is three; therefore, the Department was correct in its decision to terminate the Claimant's Aged and Disabled Waiver benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate the Claimant's Aged and Disabled Waiver benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of February, 2012.

**Eric L. Phillips
State Hearing Officer**