



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

March 6, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 6, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your 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 continue to meet the medical eligibility requirements for the Aged/Disabled Waiver Program based on the results of your December 12, 2011 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate your 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
Public Partnerships, LLC

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-458

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on March 6, 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
-----, Claimant's representative
-----, Claimant's witness

Kay Ikerd, Department representative
-----, Department's witness

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 terminate the Claimant's 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 29, 2010
- D-3 Pre-Admission Screening (PAS) assessment completed December 12, 2011
- D-3 Notice of Potential Denial dated December 20, 2011
- D-4 Notice of Decision dated January 5, 2012

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver (ADW) Program during the month of December 2011. The Claimant is diagnosed with schizoaffective and psychosis disorders as well as bipolar disorder. He is reportedly non-cooperative and combative at times.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), -----, completed a medical assessment (D-2) on December 12, 2011, in the Claimant's home and determined that he does not continue to meet the medical eligibility criteria for the program. The nurse testified that the Claimant received one (1) deficit on the Pre-Admission Screening (PAS) assessment. The Department stipulated during the hearing that the Claimant established one (1) deficit in the area of vacating a building.
- 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)

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.

- 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 additional deficits should be awarded in the areas of grooming, dressing, bladder incontinence, transferring, and medication administration.
- 7) In the area of grooming, the Claimant was rated as being able to groom with prompting and/or supervision. Policy specifies that to receive a deficit for grooming, an individual must need at least one-person physical assistance to perform the function. The nurse recorded the following pertinent information during the assessment:

He states he washes his hair/head in the shower and he keeps hair trimmed off with clippers. Hair is too short to even comb. He states he shaves himself with a regular razor. At completion of assessment, he stood up as I was leaving and walked into the kitchen area of home and sister told him he missed a spot on the back of his head this morning. He denies use of skin lotion out of shower. He states he picks at his fingernails and clips his own toenails with clippers. He has a few of his own teeth and will brush them and his tongue with a toothbrush.

The Claimant's sister, -----, is also his homemaker. She stated that she assists the Claimant with cutting his nails at times and that she occasionally must assist with washing his hair because he often leaves soap that she must clean the area for him. She stated that the Claimant often becomes argumentative and will not do these daily functions himself. The Claimant's father, -----, stated that it is difficult to get the Claimant to do tasks because he often gets argumentative. He added that the Claimant will start an action but often does not finish. ----- stated that no one spoke up during the December 2011 assessment and provided information suggesting the Claimant requires physical assistance for this activity.

In the area of dressing, the Claimant was rated as being able to dress himself with prompting and supervision. Policy specifies that to be assessed a deficit for dressing, the individual must require at least one-person physical assistance for the function. The WVMI nurse documented the following during the PAS assessment:

He states his sister washes his clothes and lays them out for him and then he dresses himself. He states he can put [on] shirts and that he stands and puts one leg in at a time when putting on his pants. He states he puts on his own socks and shoes independently and was wearing Nike tennis shoes and I asked if he could tie them and he states “yes mam” [sic].

----- stated that the Claimant is capable of physically dressing himself, but added that mentally he is sometimes not capable because he will wear the same clothes for days. She stated that for today’s hearing he dressed himself and that he did not wear socks today. She added that he takes the strings out of his shoes, so she tries to buy him shoes without strings. She added that he gets the seasons confused and will wear wool in 80 degree weather and sometimes go outside in cold weather without a shirt.

In the area of bladder incontinence, the Claimant was rated as being occasionally incontinent. Policy specifies that to be assessed a deficit in this area, an individual must be totally incontinent. Ms. Ikerd explained that total incontinence is determined when an individual has more than 3 episodes of incontinence weekly. The nurse documented the following during the assessment:

He denies any incontinence and states he can make it to the bathroom. Sister reports that he will have a big wet spot in the front of his pants occassionally [sic] and she is uncertain if he has wet on himself or peed and got it on his pants when using the toilet. I asked how often would she [sic] see wetness on his pants and she states maybe once or twice weekly and then member states “when I can’t make it to the bathroom.”

----- stated that the Claimant has bladder incontinence daily where he wets the front of his pants. She stated that she has to go behind him and make him change. She stated that she did not explain this further to the nurse during the assessment because the Claimant becomes upset and argumentative when she discusses such things in his presence. The Claimant became very upset during the hearing when this and other sensitive areas were discussed. The Claimant actually left the room before the hearing was adjourned because he was so upset.

In the area of transferring, the Claimant was rated as using assistive devices to transfer. Policy specifies that to receive a deficit in this area, an individual must require the physical assistance of at least 1 individual for this function. The nurse recorded the following pertinent information during the assessment:

He transfers independently. He sleeps on a couch in his room per his preference instead of a bed and can get off the couch independently.

He denies having any difficulty transferring from the toilet.

----- stated that the Claimant must hold onto the arms of chairs due to stiffness in his joints, which is consistent with the rating assigned to him by the nurse during the assessment.

In the area of medication administration, the Claimant was rated as needing setup and supervision. Policy specifies that to receive a deficit in this area, an individual must be physically or mentally unable to administer their medications. Ms. Ikerd explained that for a deficit in this area, the individual must be unable to take the pills from bottles or a setup container and place them into the mouth. The nurse documented the following on the date of the assessment:

He takes meds daily out of rx [prescription] bottle but needs supervision from sister to ensure he takes pills. She states she checks his mouth to ensure he swallows medication. He also gets a shot at MD office monthly of Haldol.

----- stated that the Claimant can take his medications but that she must check his mouth to make sure he swallows them. The Claimant's father added that the Claimant "checks" his pills and then spits them out. ----- stated that she believes the Claimant needs help; however, she added that she believes she scored the Claimant correctly based on the policy. She suggested the Claimant search for other programs geared toward the needs of the Claimant.

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 one (1) deficit during the December 2011 PAS assessment, in the area of vacating a building during an emergency. He must be assessed four (4) additional deficits in order to be determined medically eligible for the program. The Claimant contested the ratings he received in the areas of grooming, dressing, bladder incontinence, transferring, and medication administration.
- 3) The evidence and testimony regarding grooming is not sufficient to support the award of a deficit. The Claimant clearly indicated that he could perform these type functions without physical assistance. -----' testimony to the contrary is given little weight because she was present at the time of the assessment and did not voice her disagreement at that time. There is no mention in the assessment that she communicated anything that would suggest the Claimant requires physical assistance with this function.
- 4) The evidence and testimony regarding dressing is not sufficient to support the award of a deficit. The Claimant again clearly reported that he could perform the function without physical assistance. -----' testimony to the contrary again is given little weight because she was present for the assessment and did not voice her disagreement at that time.

There is no indication in the assessment that ----- reported the need for physical assistance in this area.

- 5) The evidence and testimony regarding bladder incontinence is sufficient to support the award of a deficit. The Claimant clearly reported during the assessment that he has issues with bladder incontinence as did -----'. -----' testimony during the hearing that the Claimant has bladder accidents daily is both credible and compelling.
- 6) The evidence and testimony regarding transferring does not support the award of a deficit. The Claimant clearly reported using assistive devices to transfer during the assessment, and -----' testimony during the hearing corroborated the earlier findings in this area. There was no evidence supporting that the Claimant requires physical assistance with transferring.
- 7) The evidence and testimony regarding medication administration does not support the award of a deficit. The testimony from -----' is consistent with the Claimant requiring supervision and set-up only. She stated that Claimant is capable of taking his own medications once they are set up for him, and that she must check his mouth to ensure he has taken the medication. This is consistent with supervision and set-up.
- 8) As result of the above conclusions, the Claimant has established (1) additional deficit, for a total of (2) deficits, and has not established medical eligibility for the Aged/Disabled Waiver program.
- 9) The Department was correct in its decision to terminate medical eligibility in the Aged/Disabled Waiver program based on the results of the December 2011 PAS.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's 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 6th Day of December, 2011.

**Cheryl Henson
State Hearing Officer**