



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Board of Review  
P.O. Box 1736  
Romney, WV 26757

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

Earl Ray Tomblin  
Governor

March 12, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 8, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny 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 for the Aged and Disabled Waiver program.

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

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

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

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-459**

**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 January 12, 2012.

**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  
-----, Claimant's daughter  
Kay Ikerd, RN-Bureau of Senior Services (BoSS)  
-----, RN-West Virginia Medical Institute

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 was correct in its decision to deny the Claimant's medical eligibility for benefits and services under the Aged and Disabled Waiver program.

**V. APPLICABLE POLICY:**

Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening dated December 13, 2011
- D-3 Notice of Potential Denial dated December 22, 2011
- D-4 Notice of Denial dated January 6, 2012

**VII. FINDINGS OF FACT:**

- 1) On December 13, 2011, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant to determine her medical eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening assessment (PAS).
- 2) Ms. -----, WVMI assessing nurse testified that the assessment was completed with the Claimant and functional deficits were identified as bathing, grooming and dressing.
- 3) On December 22, 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 WVMI within a two week timeframe from the date of the issuance of the notice.

- 4) On January 6, 2012, the Claimant was issued Exhibit D-4, 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, through testimony from her daughter, contended that additional deficits should have been awarded in the areas of vacating during an emergency, eating, transferring, walking and medication administration.

The following addresses the contested areas:

**Vacating**----- indicated that the Claimant was able to vacate her residence independently in the event of an emergency and documented her findings as, “applicant reports she feels she could get self out of her home in an emergency that her animals would be the first thing she got out.” ----- indicated that she observed the Claimant transfer and ambulate without physical assistance and believed that she would have been able to vacate during the assessment. -----, Claimant’s daughter, testified that she contradicted her mother’s statement during the assessment, that she could vacate independently, and informed the nurse that her mother required assistance in order to vacate her residence in the event of an emergency. ----- indicated that she did not recall -----’s statements during the assessment. Pursuant to Aged and Disabled Waiver policy, a deficit is awarded when the individual is physically or mentally unable to vacate a building in the event of an emergency. Policy stipulates that an individual’s capacity to vacate independently or with supervision is not considered deficits. The matter before the Board of Review is whether or not the assessing nurse correctly assessed the Claimant based on information known at the time of the assessment. As a result of the Claimant’s ability to transfer and ambulate without the aid of physical assistance during the assessment, coupled with the statement that the Claimant could independently vacate her residence; the assessing nurse correctly assessed the Claimant’s abilities and an additional deficit in the contested area **cannot** be awarded.

**Eating**----- assessed the Claimant’s eating ability as a Level 1 Self/Prompting and documented her findings in the PAS assessment as, “asked applicant is [sic] she can cut up her foods, use a knife and a fork to cut up her meats and applicant reports she can cut up her foods but sometimes depending on arthritis in hands she may need help, asked how often reports its [sic] not a daily thing, applicant can feed herself.” ----- indicated that her mother is unable to cut up foods, such as tougher meats or apples, because of a lack of grip in her hands due to carpal tunnel syndrome, arthritis and tendinitis which results in numbness of the hands. ----- indicated that her mother can cut soft meats, such as chicken or turkey, but indicated that the majority of her mother’s meats are pre-cut. Pursuant to Aged and Disabled Waiver policy, a deficit is awarded when the individual is assessed as a Level 2 or higher meaning that individual requires physical assistance to obtain nourishment. While the Claimant reported at the assessment that she occasionally required assistance to cut up her foods, due to arthritis and lack of grip, testimony provided during the hearing revealed that the majority of the Claimant’s meals are pre-cut to aid in her ability to eat. Therefore, the Claimant requires physical assistance in the area of eating and an additional deficit in the contested area **can** be awarded.

**Transferring**----- assessed the Claimant’s ability to transfer as a Level 2 Supervised/Assistive device and documented her findings in the PAS as, “applicant has bed elevated do [sic] to acid reflux, reports she can get self in and out of the bed, has some difficulty with getting up from furniture. Reports she hasn’t never [sic] not been able to get self up. No physical assistance.” ----- indicated that her mother does not transfer well and her mother must roll to the side of bed in order to transfer out of the bed. ----- purported that her mother has a raised bed which assists her mother in transferring. Pursuant to Aged and Disabled Waiver policy, a deficit is awarded in the contested area when the individual is assessed as a Level 3 or higher meaning that the individual requires one or two person assistance in the home. Testimony presented during the hearing indicated that the Claimant is able to transfer with assistive devices. Because there was no evidence presented to establish that the Claimant requires one-person assistance to transfer, a deficit in the contested area **cannot** be awarded.

**Walking**----- assessed the Claimant’s ambulation as a Level 2 Supervised/Assistive device and documented in the PAS that the Claimant, “walks with cane in the home or hangs onto things in the home, walls, furnishings. Impaired mobility, altered gait.” ----- indicated that there have been multiple occasions in which other individuals have had to prevent her mother from falling while walking. ----- indicated that her mother experiences neuropathy in her feet which inhibits her ability to ambulate. ----- indicated that her mother ambulated independently on the day of the assessment, but she normally walks behind her mother to supervise her in order to prevent falls. Pursuant to Aged and Disabled Waiver policy, a deficit is awarded in the contested area when the individual is assessed as a Level 3 or higher meaning they require one or two person assistance in the home. Testimony presented during the hearing indicated that the Claimant is able to ambulate with assistive devices and other individuals ambulate behind her to prevent falling. Because there was no evidence presented to establish that the Claimant requires hands on one-person assistance to ambulate, a deficit in the contested area **cannot** be awarded.

**Medication Administration**----- assessed the Claimant was able to administer her own medications with prompting and supervision and documented her findings in the PAS assessment as, “pill box, needs some supervision, getting mixed up with medications, needs reminding at times to take her medications, applicant can administer to self.” ----- testified that she places her mother’s medication in a weekly pill box and acknowledged that the Claimant could administer her medication with reminders. Pursuant to Aged and Disabled Waiver policy a deficit is awarded in the contested area when the individual is not capable of administering their own medication. Testimony revealed that the Claimant was able to administer her own medication with reminders; therefore, the assessing nurse correctly assessed the Claimant’s ability and an additional deficit **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 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 revealed that an additional deficit should be awarded in the area of eating.
- 4) The Claimant's total number of deficits is four; therefore, the Department was correct in its decision to deny the Claimant's application for the Aged and Disabled Waiver program.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the action of the Department in denying the Claimant's application for 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 March, 2012.**

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**Eric L. Phillips**  
**State Hearing Officer**