



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

April 9, 2012

Dear -- ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 3, 2012. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid Aged and Disabled Waiver (ADW) Program services based on medical findings.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2).

The information submitted at your hearing revealed that the Department was correct to award three deficits during your most recent PAS assessment, and to deny ADW services.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny benefits under the ADW Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, Department Representative
Brenda Myers, West Virginia Medical Institute
[REDACTED] Case Manager

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

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

Grievant,

v.

ACTION NO.: 12-BOR-465

**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 concluded on April 9, 2012, 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 April 3, 2012, on a timely appeal, filed January 9, 2012.

All persons offering testimony were placed under oath.

It should be noted that benefits have been continued through the hearing process.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (hereinafter "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

Kay Ikerd, Department representative

Brenda Myers, Department witness

Presiding at the Hearing was Todd Thornton, 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 decision to terminate Aged and Disabled Waiver Program services to the Claimant based on medical findings.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5 – 501.5.1.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5 – 501.5.1.1
- D-2 Pre-Admission Screening (PAS) form, dated December 15, 2011
- D-3 Notice of potential denial, dated December 20, 2011
- D-4 Notice of decision, dated January 5, 2012
- D-5 Pre-Admission Screening (PAS) form, dated January 4, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant is a 40-year-old female recipient of Aged and Disabled Waiver (ADW) Services. Brenda Myers, a registered nurse employed by West Virginia Medical Institute (WVMI), completed a pre-admission screening (PAS) assessment of the Claimant on December 15, 2011 (Exhibit D-2) to reevaluate medical eligibility for the program. The Department issued a potential denial notice (Exhibit D-3) on December 20, 2011, and a denial notice (Exhibit D-4) on January 5, 2012. Both notices indicated that only three deficits were awarded, and that a minimum of five deficits are required for medical eligibility.

- 2) Kay Ikerd, representative for the Department’s Bureau of Senior Services, testified that the applicable policy for this proposed Department action is from the Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services. At §501.5.1.1, this policy (Exhibit D-1) states, as follows:

501.5.1.1 Medical Criteria

An individual must have five deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section	Description of Deficits	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for 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.	

- 3) Ms. Myers testified that based on her December 15, 2011, PAS assessment she awarded the Claimant deficits in three areas: *bathing, dressing, and grooming*.
- 4) Two additional areas were proposed on the Claimant's behalf: *continence of bladder and eating*. [REDACTED] the Claimant's case manager, testified that the PAS as completed was correct but with more information regarding the frequency of the Claimant's incontinence episodes and her inability to cut up her food these areas should have resulted in deficits for the Claimant.
- 5) Ms. Myers testified that she observed the Claimant's ability to grip as part of her assessment of the Claimant's functional area of *eating*. She additionally asked the Claimant about this area during the PAS assessment, reviewed her findings at the conclusion of the PAS assessment with the Claimant, her case manager Ms. Johnson and her homemaker. She noted these findings on page 7 of the December 15, 2011 (Exhibit D-2) PAS as follows:

Eating: She states she feeds herself and has the ability to cut up her own food using utensils. I specifically asked once food is prepared could she cut up her own foods and she states yes. Hand grips are strong in both hands [*sic*]

- 6) [REDACTED] testified that the Claimant could not cut up her food and uses prescription splints. She testified that the Claimant was not prescribed the splints until January 26, 2012, and did not report her limitations in the functional area of *eating* on the December 15, 2011 PAS assessment for this reason.
- 7) Ms. Myers testified that she assessed the Claimant in the area of continence of bladder by asking her questions about continence and the frequency of incontinence episodes. Ms. Myers noted her findings in this area on page 7 of the December 15, 2011 (Exhibit D-2) PAS as follows:

Continence: Bowel/Bladder: We discussed incontinence with bladder as she has I mention to her referral indicates dx of frequency of urination and urge incontinence [*sic*]. She states accidents will occur mainly as she cannot get to bathroom because of the urgency and will wet on herself. I asked regarding frequency of bladder incontinence and specifically asked how many accidents in the past week did she have and she states maybe 2. Asked about incontinence with bowels and she denies any incontinence with bowels and HM nods head No as she states No. She denies any use of incontinent supplies.

- 8) ██████████ testified that the Claimant was not forthcoming in the PAS assessment regarding her problems with incontinence because she was embarrassed and because she did not have a prescription for incontinence supplies.
- 9) Ms. Myers testified that the areas of *eating* and *continence of bladder* are functional areas assessed by the nurse and do not require a diagnosis or prescription from a physician. Ms. Myers testified that the threshold for assessing an individual as incontinent is when the frequency of incontinence episodes is three or more per week.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for ADW Program services. The WVMi nurse determined, at the time of the PAS, that the Claimant had three qualifying deficits. Testimony on the Claimant's behalf proposed two additional deficits in the areas of *eating* and *continence of bladder*. The WVMi nurse directly observed the hand grip ability of the Claimant during her assessment. A prescription given over a month after the PAS assessment is not considered. The Department correctly assessed the area of *eating*.
- 2) Testimony indicated that the Claimant was embarrassed during discussion of *continence of bladder* at her PAS assessment, and did not claim incontinence because she was not using incontinence supplies. Both arguments are unconvincing, given that the Claimant did admit to episodes of incontinence, just not to a frequency of those episodes that meets the Department's incontinence assessment threshold. The Department correctly assessed the area of *continence of bladder*.
- 3) With no additional deficits revealed through testimony or evidence, the proposed Department action to terminate the Claimant's Aged/Disabled Waiver benefits is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility requirements.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of April, 2012.

**Todd Thornton
State Hearing Officer**