



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 1, 2012

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c/o -----  
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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 29, 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-469**

**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 9, 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's Attorney-In-Fact  
Kay Ikerd, RN-Bureau of Senior Services (BoSS)  
-----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 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 Assessment dated December 1, 2011
- D-3 Notice of Potential Denial dated December 12, 2011
- D-4 Notice of Decision dated December 28, 2011

**VII. FINDINGS OF FACT:**

- 1) On December 1, 2011, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant to determine his 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. During the assessment, ----- identified the Claimant's functional deficits as vacating during an emergency, bathing and grooming.
- 3) On December 12, 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-vacate a building, bathing and grooming.

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

- 4) On December 28, 2011, the Claimant was issued Exhibit D-4, Notice of Denial, informing him 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-vacate a building, bathing, and grooming.

- 5) The Claimant's representative contends that additional deficits should have been awarded in the areas of medication administration and orientation.

The following addresses the contested areas:

**Medication Administration**-Ms. -----, Claimant's Attorney-In-Fact testified that the Claimant has cysts under his arms, due to poor hygiene, in which he requires antibiotic treatment. -----states that her brother needs to be reminded to take the antibiotics and bathe to correct the cysts. ----- indicated that a deficit is awarded in medication administration when the individual requires others to administer their medications. ----- assessed the Claimant as able to administer his medications with prompting and supervision and documented her findings in the assessment as, "Sister says he is forgetting to take his medications, sister brings medications to him and then he takes."

Policy requires that a deficit is awarded in the contested area when the individual is incapable of administering their own medications. Testimony revealed that the Claimant was able to administer his medications and required prompting as a reminder. Therefore, the assessing

nurse correctly assessed the Claimant and an additional deficit in the contested area cannot be awarded.

**Orientation**-----indicated that her brother has difficulties remembering days and his memory is deteriorating. ----- indicated that a deficit is awarded when the individual is totally disoriented to person, place and time and assessed the Claimant at a Level 2- intermittently Disoriented. ----- documented her findings in the assessment regarding the Claimant’s orientation as, “Oriented to person, place. Applicant reports this is Thursday, but not able to tell me the month or year.”

Policy requires that a deficit is awarded in the contested area when the individual is assessed at a Level 3 or higher meaning the individual is totally disoriented or comatose. During the assessment the Claimant was oriented to person and place and did not exhibit total disorientation. Therefore, the assessing nurse correctly assessed the Claimant and an additional deficit in the contested area 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 vacating, bathing and grooming.
- 3) Testimony and evidence presented during the hearing did not reveal additional deficits.
- 4) The Claimant's total number of deficits remains at three; 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 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**