



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

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

March 30, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on March 13, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny your medical eligibility for 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 Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged and 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 homes where services can be provided. [Aged and Disabled (HCB) Services Manual Section 501]

Information submitted at your hearing reveals 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 proposal of the Department to deny your application for the Aged and Disabled Waiver Program.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services
-----, WV DHHR, [REDACTED] County Office

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

IN RE: -----,

Claimant,

v.

ACTION NO: 12-BOR-474

**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 March 30, 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 conducted by telephone conference call on March 13, 2012, on a timely appeal filed January 9, 2012.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (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, RN, WV Bureau of Senior Services, Department's Representative

Paula Clark, RN, West Virginia Medical Institute, Department's Witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to deny Claimant's application for the Aged and Disabled Home and Community-Based Waiver Program based on a Pre-Admission Screening (PAS) conducted on December 5, 2011.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community-Based Services Manual Section 501.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community-Based Services Manual Section 501.5
- D-2 Pre-Admission Screening (PAS) assessment conducted on December 5, 2011
- D-3 Potential denial letter from APS Healthcare, dated December 8, 2011
- D-4 Denial letter from APS Healthcare, dated December 22, 2011

VII. FINDINGS OF FACT:

- 1) Claimant was an applicant for the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of the application process, a nurse from the West Virginia Medical Institute (WVMI) performed a Pre-Admission Screening (PAS) in Claimant's home on December 5, 2011. (Exhibit D-2.)
- 2) Aged and Disabled Home and Community-Based Services Waiver Policy Manual Section 501.5 (Exhibit 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.

- 3) Department's witness testified that she conducted the PAS (Exhibit D-2) on December 5, 2011 in the Claimant's home. She stated that the Claimant, Claimant's cousin and she were present for the assessment session. She stated that she assessed Claimant with four (4) deficits on the PAS, for vacating a building during an emergency, bathing, grooming, and continence, and therefore Claimant did not meet the medical eligibility criteria for the Program.
- 4) The Department issued a Notice of Potential Denial dated December 8, 2011. (Exhibit D-3.) This notice stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WVMI within the next 2 weeks." Department's witness testified that she received no additional medical information. The Department sent a Notice of Termination/Denial to Claimant on December 22, 2011. (Exhibit D-4.)
- 5) Claimant's representative asserted that Claimant should have received two additional deficits on the December 5 PAS, in the areas of walking and administering medications.

- 6) **Walking:** On the December 5 PAS (Exhibit D-2) at item #26-i, walking, the WVMI nurse assessed the Claimant as “supervised/assistive device,” which is not sufficient to award a deficit. She wrote in the “Nurse’s overall comments” section of the PAS, “[Claimant] demonstrated she is able to walk in her apartment. [Claimant] walks quickly and at times is unsteady. [Claimant’s] cousin reports [Claimant] has fallen frequently. [Claimant] did not hold to furniture or walls and did not use her walker. [Claimant] assessed as needing supervised/assistive device with walking due to unsteadiness and frequent falls.” Claimant’s representative argued that since Claimant lives alone, falls present great risk to her. She also stated that Claimant fell in her home in early November and late December. Claimant added that she has a medical alert device to alert emergency medical personnel in case she has a fall.
- 7) **Administering Medications:** On the December 5 PAS (Exhibit D-2) at item #28, administering medications, the WVMI nurse assessed the Claimant “with prompting/supervision,” which is not sufficient to award a deficit. She wrote in the “Nurse’s overall comments” section of the PAS, “[Claimant] reports she is able to put her medications in her mouth herself but states she forgets to take her medications and needs to be reminded.” Claimant’s representative argued that because Claimant lives alone and does not have someone to prompt her to take her medications, her ability to administer her own medications is severely compromised. Department’s representative stated that in order for Claimant to be assessed with a deficit in this area, she would not be able to pick up her medicine and physically put it in her mouth.

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 and Disabled Waiver Program. On the PAS that was performed on December 5, 2011, Claimant obtained four (4) deficits, for vacating a building during an emergency, bathing, grooming, and continence.
- 2) Claimant’s representative argued that two additional deficits should have been assessed, in the areas of walking and administering medications.
- 3) The Department was correct in its decision not to assess Claimant with a deficit for the functional ability of walking. Department’s witness testified and recorded on the PAS that she observed Claimant walking in her home without requiring another person to help her.
- 4) The Department was correct in its decision not to assess Claimant with a deficit in the area of administering medications. Department’s witness testified and recorded on the PAS that Claimant told her she could take her own medications, but she occasionally needed someone to remind her to do so. Policy states that in order to

receive a deficit in this area, Claimant would not be able to pick up a pill and physically place it in her mouth.

- 5) Neither Claimant nor her representative provided testimony or evidence to support a finding that additional deficits should have been awarded on the December 5, 2011 PAS; therefore, the required five (5) deficits have not been established to meet medical eligibility criteria for the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny Claimant's application for the Aged and Disabled Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of March, 2012.

**Stephen M. Baisden
State Hearing Officer**