



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

April 19, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on March 20, 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

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

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

Claimant,

v.

ACTION NO.: 12-BOR-535

**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 19, 2012, for ---- ----- . This hearing was held in accordance with the provisions found in the Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This Fair Hearing was held at the [REDACTED] County office of the WV DHHR on March 20, 2012, with Department representatives appearing by telephone conference call, on a timely appeal filed January 20, 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
---- -----, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Kathy Gue, 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 8, 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 8, 2011
- D-3 Potential denial letter from APS Healthcare, dated December 12, 2011
- D-4 Denial letter from APS Healthcare, dated December 28, 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 8, 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 8, 2011, in the Claimant's home. She stated that the Claimant, as well as her daughter and homemaker, 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, eating, bathing and grooming, and therefore Claimant did not meet the medical eligibility criteria for the Program.
- 4) The Department issued a Notice of Potential Denial dated December 12, 2011. (Exhibit D-3.) This notice stated, "If you believe you have additional information regarding your medical conditions that was not considered, please submit those records to WVMi within the next two weeks." Department's witness testified that she received no additional medical information. The Department sent a Notice of Termination/Denial to Claimant on December 28, 2011. (Exhibit D-4.)
- 5) Claimant's representative asserted that Claimant should have received four (4) additional deficits on the December 8 PAS, in the areas of dressing, continence, transferring and administering medications.

- 6) **Dressing:** On the December 8 PAS (Exhibit D-2) at item #26-c, dressing, Department's witness assessed the Claimant as "self/prompting," which is not sufficient to award a deficit. She wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] denies needing help with dressing, says that she dressed herself this morning." Claimant's representative argued that Claimant has to sit on the edge of her bed to get dressed, and that she has a very difficult time putting on her socks and shoes without assistance. She added that Claimant usually wears slip-on shoes because she has trouble with regular shoes. Department's witness testified that on the day of the PAS, Claimant told her she dressed herself that day. Department's witness added that she observed Claimant reach down and touch her toes without difficulty.
- 7) **Continence:** On the December 8 PAS (Exhibit D-2) at items #26-e and #26-f, continence, Department's witness assessed the Claimant as "occasionally incontinent" of bladder, and "continent" of bowel, neither of which is sufficient to award a deficit. She wrote in the "Nurse's overall comments" section, "Incontinence of bladder [once per week]. Wears Depends and pads. Incontinence of bowels [once per week] due to not being able to get to bathroom fast enough." Claimant's representative argued that her mother was embarrassed to admit that she has continence accidents, but that she and Claimant's other care-givers keep a separate trash can for her to discard her wet pads and adult diapers. She added that there are always several of these items in the trash can throughout the day. Department's witness testified that in order to assess Claimant with a deficit for bladder incontinence, she would have to report accidents at least three times per week. She testified that Claimant told her during the December 8 PAS that she had bladder and bowel accidents once per week.
- 8) **Transferring:** On the December 8 PAS (Exhibit D-2) at item #26-h, transferring, Department's witness assessed the Claimant as "supervised/assistive device," which is not sufficient to award a deficit. She wrote in the "Nurse's overall comments" section, "Observed [Claimant] get to a standing position from a lift chair but she did not use the lift. She used the arms of the chair to push herself up." Claimant's representative argued that Claimant did transfer from sitting to standing without using her lift, but it took her a while to stand and she was unstable. Department's witness testified that in order for Claimant to receive a deficit for transferring, she would need the assistance of at least one other person to help her stand up or to sit down in her chair. She added that Claimant pushed herself up to a standing position from her chair and sat back down without assistance.
- 9) **Administering Medications:** On the December 8 PAS (Exhibit D-2) at item #28, administering medications, Department's witness assessed the Claimant "with prompting/supervision," which is not sufficient to award a deficit. She wrote in the "Nurse's overall comments" section, "Daughter sets medications up in a weekly planner then sets medications out daily for [Claimant] to take when they are due." Claimant's representative argued that she and her sister have to put their mother's medications in a cup and set it before her to take, because if they did not do this, her

mother would forget to take them. Department's witness testified that in order for Claimant to be assessed with a deficit in this area, her caretakers would have to physically place the medications in her mouth.

- 10) Department's witness testified that when she concluded the PAS on December 8, she reviewed her findings with everyone present, and asked them if there were any areas of the PAS wherein she misunderstood Claimant or did not record correct information about Claimant's functional abilities in the home. She testified that no one voiced any objections to the information she included in the PAS.

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 8, 2011, Claimant obtained four (4) deficits, for vacating a building during an emergency, eating, bathing and grooming.
- 2) Claimant's representative argued that four additional deficits should have been assessed, in the areas of dressing, continence, transferring and administering medications.
- 3) The Department was correct in its decision not to assess Claimant with a deficit for the functional ability of dressing. Department's witness testified and recorded on the PAS that Claimant told her she could dress herself, and she observed Claimant reach down and touch her toes without difficulty. According to policy, Claimant must require at least one person to assist with dressing in order to receive a deficit for this functional ability.
- 4) The Department was correct in its decision not to assess Claimant with a deficit for the functional ability of continence. Department's witness testified and recorded on the PAS that Claimant reported bladder and bowel accidents about once per week, and no one else who was present for the PAS offered any objections to this finding. According to policy, Claimant must have at least two or three bowel or bladder accidents per week in order to receive a deficit.
- 5) The Department was correct in its decision not to assess Claimant with a deficit for the functional ability of transferring. Department's witness testified and recorded on the PAS that she observed Claimant get from a sitting to a standing position without requiring another person to help her. According to policy, Claimant must require the hands-on assistance of at least one person to transfer in order to receive a deficit.
- 6) 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's family members had to put her medications in a weekly

planner and give them to her in a cup to ensure she did not forget to take them. 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.

- 7) Neither Claimant nor her representative provided testimony or evidence to support a finding that additional deficits should have been awarded on the December 8, 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 19th Day of April, 2012.

**Stephen M. Baisden
State Hearing Officer**