



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26555

Earl Ray Tomblin
Governor

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

March 23, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 21, 2012. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through 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/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state that the Aged/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 home where services can be provided. [Aged/Disabled (HCB) Services Manual, Section 501]

Information submitted at the hearing fails to demonstrate that you medically qualify for benefits and services provided through the Medicaid Aged/Disabled Home and Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your application for benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI

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

IN RE: -----,

Claimant,

v.

Action Number: 12-BOR-543

**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 March 21, 2012 on a timely appeal filed January 18, 2012.

II. PROGRAM PURPOSE:

The 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

-----, CM, Valley Healthcare

Kay Ikerd, RN, Bureau of Senior Services (BoSS), Department's representative

-----, RN, West Virginia Medical Institute (WVMI), Department's witness

Presiding at the hearing was Thomas E. Arnett, 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 action to deny the Claimant's application for benefits and services through the Medicaid Aged/Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual, Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed on December 19, 2011
- D-3 Notice of Potential Denial dated December 22, 2011
- D-3a Additional information – UHC Neurosurgery & Spine Center, Return Office Visit (History of the Present Illness and Assessment and Plan 1/16/12) and correspondence from ██████████ Valley HealthCare System, dated 12/30/11.
- D-4 Notice of Termination/Denial dated January 10, 2012

VII. FINDINGS OF FACT:

- 1) On December 19, 2011, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged/Disabled Waiver Services Program, hereinafter ADW Program [Exhibit D-2, Pre-Admission Screening (PAS) form].
- 2) On or about December 22, 2011, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

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, Chapter 501.5.1.1.

Based on your PAS you have deficiencies in only 2 areas – Grooming and Dressing.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination was made, if received within two weeks. Exhibit D-3a includes additional documentation submitted from Valley HealthCare and UHC Neurosurgery & Spine Center, however, it was noted by the Department that the information received from UHC was not received timely.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Notice dated January 10, 2012 (Exhibit D-4). This notice states, in pertinent part:

The West Virginia Medical Institute (WVMI) recently conducted an assessment of your medical eligibility for the Aged and Disabled Waiver Program. You have been determined [sic] medically ineligible for Waiver services.

This decision results in the denial or termination of your Waiver services. This is based on policy in the Medicaid program regulations, Aged and Disabled Waiver Policy Manual, Section 501.5.1.1 and the Pre-Admission Screening (PAS) Form (attached).

REASON FOR DECISION: Medical eligibility for the **Aged and Disabled Waiver Program** requires deficits in at least **five (5)** of the health areas listed below – Grooming and Dressing.

Your Pre-Admission Screening Form (PAS) indicates deficiencies in **two (2)** areas. Because you have less than **five (5)** deficits, you are not medically eligible for the Aged and Disabled Waiver Program.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates two (2) deficits (Dressing and Grooming), but indicated the medical assessment completed in December 2011 fails to identify five (5) functional deficits as required by ADW Program medical eligibility criteria.
- 5) The Claimant contends that she should have been found medically eligible as she is also demonstrating functional deficits in bathing, incontinence, transferring and medication administration. The following will be the contested functional deficits:

Bathing - Pursuant to Medicaid policy criteria, a deficit can only be awarded in bathing if the individual requires hands-on physical assistance to wash, or physical assistance with transferring in and out of the tub/shower. -----, RN, WVMI, cited her documentation in Exhibit D-2 and noted that the Claimant did not present any mental or physical impairment that would limit her ability to bathe independently. RN [REDACTED] further noted that the Claimant is alone in the home when she showers, reported that she is currently washing herself from head to toe without assistance, and denied being unable to wash any part of her body. The Claimant provided testimony to indicate that her concern is transferring in and out of the shower, especially after she has disc surgery in the near future. While the Claimant indicated that transferring is a concern, there was no testimony presented to indicate she required physical assistance at the time of the assessment. As a result, the Claimant was correctly assessed at a Level-1 (prompting and supervision).

Incontinence – A functional deficit is identified in bowel or bladder incontinence (Level 3) when it is determined that the individual suffers from three (3) or more episodes of incontinence a week.

Specific to the issue of **bladder incontinence**, RN [REDACTED] testified that the Claimant reported episodes of bladder incontinence less than three (3) times per week during the December 2011 assessment. RN [REDACTED] cited her documentation (D-2, page 8) wherein the Claimant reported that she does not use a bedside commode or incontinence supplies. The Claimant testified that she has [bladder] incontinence episodes sometimes when she cannot transfer quickly enough to make it to the restroom. While the Claimant testified that it is difficult to identify how often this occurs, she reported during the assessment that this happens approximately one (1) time per week. The evidence fails to support the establishment of a deficit in bladder incontinence.

RN [REDACTED] testified that the Claimant reported episodes of diarrhea due to diverticulitis as many as two (2) times per week. The documentation found in D-2, page 8, does not specifically indicate that this condition causes **bowel incontinence**, but the Claimant clearly reported these incidents occur less than three (3) times a week, and again denied requiring incontinence supplies. Based on the evidence, the Claimant was not demonstrating a deficit in bowel incontinence.

Transferring – The Claimant testified that she has cervical and lumbar spine disc herniations (verified in D-3a) that cause her to have good and bad days with transferring. She testified that while she lives alone, her son visits once or twice a week. The Claimant reported that she is especially concerned about transferring once she has disc surgery. RN [REDACTED] documented that she observed the Claimant transferring on and off of the bench at the kitchen table and testified that while the Claimant's son was present, he made no attempt to assist his mother with ambulating or transferring during the assessment. The evidence reveals that the Claimant sleeps in a regular bed, she does not use a lift chair and has a standard toilet. While the Claimant is clearly demonstrating some difficulties with transferring, the Claimant was observed transferring independently, lives alone and does not routinely receive assistance, and there have been no modifications in her home to assist the Claimant with transferring. The evidence fails to demonstrate the Claimant requires hands-on physical assistance with transferring in her home. As a result, a deficit cannot be awarded in transferring.

Medication Administration – According to the Medicaid ADW regulations, a functional deficit is identified in medication administration only when the individual needs someone to place the medications in his/her mouth, eye, tube etc... Prompting and supervision (reminders, medication set-up, etc...) does not qualify as a deficit. The Claimant testified that she sometimes forgets, but that she can administer all of her medications. While the Claimant could benefit from someone reminding her to take her medications, this level of assistance does not qualify as a functional deficit.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.5 – Member Eligibility:

Applicants for the ADW Program must meet the following criteria to be eligible for the program:

- A. Be 18 years of age or older.
- B. Be a permanent resident of West Virginia. The individual may be discharged or transferred from a nursing home in any county of the state, or in another state, as long as his/her permanent residence is in West Virginia.
- C. Be approved as medically eligible for nursing home level of care.
- D. Meet the Medicaid Waiver financial eligibility criteria for the program as determined by the county DHHR office, or the Social Security Administration (SSA), if an active SSI (Supplemental Security Income) recipient.
- E. Choose to participate in the ADW Program as an alternative to nursing home care.

Even if an individual is medically and financially eligible, a slot must be available for him/her to participate in the program.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 – states that 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 A/DW 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 501.5.1.1 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) Medicaid policy requires that an individual must demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. This is the same level of care that is required to qualify medically for nursing home services.
- 2) Evidence reveals that the Claimant was awarded two (2) deficits on a PAS completed by WVMi in December 2011 – Grooming and Dressing.
- 3) Evidence submitted at the hearing fails to confirm the Claimant was demonstrating any additional deficits at the time the assessment was completed.
- 4) Whereas the Claimant demonstrated only two (2) program qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

X. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department’s action to deny the Claimant’s application for benefits and services through the Medicaid, Aged/Disabled, Title XIX (HCB) Waiver Program.

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.

**Thomas E. Arnett
State Hearing Officer
Member, State Board of Review**