



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, WV 25313

Earl Ray Tomblin  
Governor

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

March 6, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 6, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical eligibility under the Aged/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 as follows: 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 your hearing fails to reveal that you continue to meet the medical eligibility requirements for the Aged/Disabled Waiver Program based on the results of your December 12, 2011 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate your medical eligibility for benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
Public Partnerships, LLC

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

**IN RE:**       -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-609**

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on March 6, 2012.

**II. PROGRAM PURPOSE:**

The Aged/Disabled Waiver Program (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's witness

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its proposal to terminate the Claimant's medical eligibility for benefits under the Aged/Disabled Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 501

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/ Disabled Home and Community-Based Services Manual Section 501.5
- D-2 Pre-Admission Screening (PAS) assessment completed November 29, 2010
- D-3 Pre-Admission Screening (PAS) assessment completed December 12, 2011
- D-4 Notice of Potential Denial dated December 20, 2011
- D-5 Notice of Decision dated January 20, 2012

**Claimant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) The Claimant was undergoing an annual evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver (ADW) Program during the month of December 2011.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), Brenda Myers, completed a medical assessment (D-2) on December 12, 2011, in the Claimant's home and determined that he no longer meets the medical eligibility criteria for the program. The nurse testified that the Claimant received three (3) deficits on the Pre-Admission Screening (PAS) assessment. The Department stipulated during the hearing that the Claimant established one (1) deficit each in the areas of vacating a building, eating, and grooming.
- 3) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (D-1) – MEMBER ELIGIBILITY, provides in part:

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.

4) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (D-1) states in pertinent part:

APS Healthcare/IRG is the contracted entity that is responsibility [sic] for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services.

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW services receives an appropriate Service Level that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the State.

5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1, (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.

6) During the hearing, the WVMI nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. After listening to the WVMI nurse explain her findings, the Claimant disagreed with her conclusions, and contends that additional deficits should be awarded in the areas of bathing, dressing, walking, transferring, and medication administration.

7) In the area of bathing, the Claimant was rated as being able to bathe with prompting or with no physical assistance. Policy specifies that to receive a deficit for bathing, an individual must need at least one-person physical assistance to perform the function. The nurse recorded the following pertinent information during the assessment:

He states he uses the walk in shower and can get into and out of shower by himself. He sits on a shower chair and tells me that he washes all of his body himself. Asked about washing his back and he states he uses a towel to hold diagonally across back and he crosses his legs to reach his lower legs and feet. Dtr [daughter] was sitting on couch beside him and no comments or disagreement of information provided by member from her.

The Claimant's daughter, -----, is also the Claimant's homemaker. She testified that the Claimant is weak. She added that he can bathe himself sometimes, but added that she washes his back for him about 3 to 4 times weekly. She stated she has been doing this since December 2011. She did not explain why she did not report this during the December 2011 PAS assessment.

In the area of dressing, the Claimant was rated as being able to dress himself with prompting and supervision. Policy specifies that to be assessed a deficit in this area the individual must require at least one-person physical assistance. The WVMI nurse documented the following during the PAS assessment:

He denies needing any assistance for dressing and states he dressed independently. He states he can put shirts on by himself, he sits down and gets legs started through the pants legs and then stands and pulls

them up. He can cross his legs and put his socks on and states he only wears loafer style shoes and just slides his feet into them. He denies having difficulty with buttons or zippers. He was dressed in a pull over shirt and trousers that day along with sock and loafer house shoes.

-----stated that she assists the Claimant with dressing by putting his socks and shoes on for him. She stated that she also helps him with putting on his shirt. She stated that she did not report this during the PAS assessment because she thought the nurse meant "every day."

In the area of walking, the Claimant was rated as being able to walk with the use of assistive devices. Policy specifies that to be assessed a deficit an individual must require at least one person to physically assist them. The nurse documented the following during the assessment:

He walked independently during the assessment. He states since being in the hospital he has a rollater [sic] walker that he sometimes may use but will also moreso [sic] he just reaches out and will steady himself with walls or furniture if needed.

-----stated that the Claimant uses the walker in the home at the doctor's request. She stated that he grabs onto things such as the back of the couch to steady himself. The Claimant stated that he manages on his own because his wife is in a wheelchair and cannot help him.

In the area of transferring, the Claimant was rated as being able to transfer with assistive devices. Policy specifies that to receive a deficit in this area, the Claimant would need to require at least one person to physically assist him. The nurse recorded the following pertinent information during the assessment:

He states his bed sits up high and he uses a two step stool to get into bed. He states he will steady himself with nightstand as he gets out of bed. He pushes against cushion of seat as he stands from being seated in furniture. He uses the vanity to push against to transfer off toilet.

-----stated that the Claimant uses the side of the commode and nightstand when transferring. She added that she does not have to lift him up yet.

In the area of medication administration, the Claimant was rated as being able to administer medications with prompting and supervision. Policy specifies that an individual be unable to administer their own medication to receive a deficit in this area. The nurse documented the following on the date of the assessment:

Meds are set up into weekly planner and then taken daily out of planner and crushed and mixed with liquid formula nutrition and administered through Gtube [sic]. Dtr [sic] states she sometimes does it for him but he is able to do it himself and she actually prefers him to do it himself as he can administer it slower.

-----stated that she sets up the Claimant's medication, crushes pills, and pours medication in stomach tube at times. She stated that sometimes the Claimant has difficulty with this and she assists. She estimated that she assists him 2 to 3 times per week. Ms. Myers stated that neither the Claimant nor -----reported the Claimant's difficulty with this process during the PAS assessment interview.

### 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/Disabled Waiver (ADW) Program.
- 2) The Claimant received three (3) deficits during the September 2011 PAS assessment, in the areas of vacating during an emergency, eating, and grooming. He must be assessed two (2) additional deficits in order to be determined medically eligible for the program. The Claimant contested the ratings he received in the areas of bathing, dressing, walking, transferring, and medication administration.
- 3) The evidence and testimony regarding bathing is not sufficient to support the award of a deficit. The Claimant clearly indicated that he could perform the function without physical assistance. [REDACTED] testimony to the contrary is given little weight because she was present at the time of the assessment and did not voice her disagreement at that time.
- 4) The evidence and testimony regarding dressing is not sufficient to support the award of a deficit. The Claimant again clearly reported that he could perform the function without physical assistance. [REDACTED] testimony to the contrary again is given little weight because she was present for the assessment and did not voice her disagreement at that time.
- 5) The evidence and testimony regarding walking is not sufficient to support the award of a deficit. The Claimant clearly reported that he could walk with assistive devices, and testimony during the hearing corroborated this claim. Both the Claimant and -----indicated the Claimant could walk with the use of assistive devices and there was no testimony to support he requires one-person physical assistance for this activity.
- 6) The evidence and testimony regarding transferring does not support the award of a deficit. The Claimant clearly indicated he could transfer by holding onto objects during the PAS assessment. Both the Claimant and -----reported during the hearing that the Claimant does not yet require one-person physical assistance. clearly reported that the Claimant could exit her home under these circumstances with
- 7) The evidence and testimony regarding medication administration supports the award of a deficit. -----reported during the PAS assessment that she sometimes prepares and administers the Claimant's medication via a stomach port. She stated during the hearing that sometimes the Claimant has difficulty performing this function and she must physically assist him.
- 8) As result of the above conclusions, the Claimant has established (1) additional deficit for a total of (4) deficits and has therefore not established medical eligibility for the Aged/Disabled Waiver program.

- 9) The Department was correct in its decision to terminate medical eligibility in the Aged/Disabled Waiver program based on the results of the December 2011 PAS.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's medical eligibility under the Title XIX Aged/Disabled Waiver (ADW) Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 6<sup>th</sup> Day of March, 2012.**

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**Cheryl Henson  
State Hearing Officer**