



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

April 5, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 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 are medically eligible for benefits and services under the Aged and Disabled Waiver program.

It is the decision of the State Hearing Officer to Reverse the action of the Department to deny your medical eligibility for benefits and services under 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-639

**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 26, 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

██████████, Case Manager-██████████ West Virginia Aging Services

██████████, Case Manager-██████████ West Virginia Aging Services

Kay Ikerd, RN-Bureau of Senior Services (BoSS)

Lee Ann Beihl, RN-West Virginia Medical Institute

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 20, 2011
- D-3 Notice of Potential Denial dated December 29, 2011
- D-4 Notice of Decision dated January 13, 2012

Claimants' Exhibits:

- C-1 Letter from -----, M.D. dated January 19, 2012

VII. FINDINGS OF FACT:

- 1) On December 20, 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. Lee Ann Beihl, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, Ms. Beihl identified the Claimant's functional deficits as vacating during an emergency, bathing, grooming and dressing.
- 3) On December 29, 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 4 areas-vacate a building, bathing, grooming and dressing.

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

- 4) On January 13, 2012, 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 4 areas-vacate a building, bathing, grooming and dressing.

- 5) On January 19, 2012, the Claimant submitted Exhibit C-1, Letter from -----, M.D. for consideration of additional information toward his assessment. Testimony revealed that the information was considered late and not made available to the assessing nurse. Whereas, the information was not made available to the assessing nurse, it cannot be considered in the State Hearing Officer's decision.
- 6) -----, the Claimant's Attorney-In-Fact, contends that her brother is medically eligible for the Aged and Disabled Waiver program and additional deficits should have been awarded in the areas of eating, transferring, walking and orientation.

The following addresses the contested areas:

Eating Ms.Beihl assessed the Claimant's eating ability as a Level 1 Self/Prompting and documented her findings in the assessment as "[Claimant] states he is able to feed himself and cut his food with a knife." ----- indicated that the Claimant can cut soft

meats, but has difficulties cutting tougher meats such as steaks or pork chops. Additionally, ---
- ---- indicated that her brother has difficulties opening lids and holding drinking glasses due
to his poor grip. Ms. Beihl testified that she reviewed the assessment with ---- ---- and the
attending RN from [REDACTED] West Virginia Aging Services at the conclusion of the assessment
and no contradiction was offered to her findings.

Policy requires that a deficit is awarded in the area of eating when the individual is assessed at
a Level 2 or higher meaning that the individual requires physical assistance to get nourishment.
Preparation is not considered when assessing a deficit. The matter before the Board of
Review is whether or not the assessing nurse correctly assessed the Claimant based on
information known at the time of the assessment. During the assessment, the Claimant
indicated that he was able to feed himself without difficulty; therefore, the assessing nurse
correctly assessed the Claimant and an additional deficit cannot be awarded in the contested
area.

Transferring Ms. Beihl assessed the Claimant as a Level 2 Supervised/Assistive Device and
documented her findings in the assessment as, “demonstrated transfer with heavy furniture and
cane assistance, poor balance, increased pain, does occasionally needs [sic] assist x 1 per
sister.” ---- ---- indicated that her brother can “brace himself against the couch” in order to
transfer, but requires assistance when transferring from his bed. ---- ---- testified that “in his
bedroom there is nothing for him to grab [for support]” and demonstrated how she assists her
brother in transferring from his bed. ---- ---- indicated that due to her brother’s size, she must
wrap her arms around his torso and pull to assist her brother from his bed and then he stabilizes
himself before he can ambulate. Ms. Beihl acknowledged that the Claimant demonstrated poor
balance and experience pain while transferring and walking.

Policy requires that a deficit is awarded in the contested area when the individual is assessed at
a Level 3 or higher meaning that the individual requires one or two person assistance in the
home. During the assessment, the Claimant’s sister indicated that the Claimant occasionally
required assistance while transferring. Credible testimony provided during the hearing process
revealed that the Claimant required one-person assistance when transferring from his bed due
to a lack of an assistive device. Whereas, the Claimant requires one-person while transferring
a deficit can be awarded in the contested area.

Walking Ms. Beihl assessed the Claimant as a Level 2 Supervised/Assistive Device and
documented her findings in the assessment as, “demonstrated walking with heavy cane
assistance, poor balance, unsteady gait, increased pain, occasionally needs assist x 1 per sister.”
---- ---- purported that her brother’s health is deteriorating and he requires assistance to
ambulate outside the home. ---- ---- provided testimony that she assists her brother down steps
and into her vehicle when leaving the home. Kay Ikerd, RN, Bureau of Senior Services
testified that the nurse assesses the individual’s abilities inside the home and cannot consider
the individual’s abilities outside of the home.

Policy requires that a deficit is awarded in the contested area when the individual is assessed at
a Level 3 or higher meaning that the individual requires one or two-person assistance in the
home. Testimony revealed that the Claimant required assistance while ambulating outside his

home. Because the assessing nurse cannot consider the Claimant's ability to ambulate outside the home, the assessing nurse correctly assessed the Claimant's ability to ambulate and an additional deficit in the contested area cannot be awarded.

Orientation ----- questioned the MI/MR Assessment Comments of the assessment which states, "he has not been hospitalized for mental illness and is not under psychiatric care. He has impaired judgment and hallucinations, becomes confused/disoriented, is unsafe to be alone." Ms. Beihl assessed the Claimant as alert and oriented during the assessment and noted that the Claimant becomes intermittently confused and disoriented.

Policy requires that a deficit is awarded in the contested area when the individual is assessed as a Level 3 or higher meaning that the individual is totally disoriented or comatose. During the assessment the individual was alert and oriented; therefore, the assessing nurse correctly assessed the Claimant and an additional deficit in the contested area cannot be awarded.

7) 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.

8) 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.

9) 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, grooming and dressing.
- 3) Testimony and evidence presented during the hearing revealed an additional deficit in the area of transferring.
- 4) The Claimant's total number of deficits is five; therefore, the Department was incorrect 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 reverse the decision of the Department to deny the Claimant's medical eligibility under 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 _____ day of April , 2012.

**Eric L. Phillips
State Hearing Officer**