



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

March 22, 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' 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 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 action of the Department to deny your medical eligibility for 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-646

**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 30, 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
Kay Ikerd, RN-Bureau of Senior Services (BoSS)
-----, RN-West Virginia Medical Institute (WVMI)

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 November 21, 2011
- D-3 Notice of Potential Denial dated November 22, 2011
- D-4 Notice of Decision dated December 9, 2011

VII. FINDINGS OF FACT:

- 1) On November 21, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant to determine her medical eligibility for the Aged and Disabled Waiver program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. -----, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, ----- identified the Claimant's functional deficits as vacating during an emergency, bathing, grooming and dressing.
- 3) On November 22, 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 WVMi within a two week timeframe from the date of the issuance of the notice.

- 4) On December 9, 2011, the Claimant was issued Exhibit D-4, Notice of Denial, informing her 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) The Claimant indicated that she has a Homemaker Aide, through the Personal Care program, and requests approval of the Aged and Disabled Waiver program in order for her Homemaker Aide to be compensated for transporting her to and from the store. The Claimant maintains that she is medically eligible for the program and contends that additional deficits should have been awarded in the areas of continence, walking and medication administration.

The following addresses the contested areas:

Continenence-Ms. Kay Ikerd, RN Bureau of Senior Services testified that a deficit is awarded in the area of continence when the individual experiences three or more weekly accidents of the bowel or bladder. ----- assessed the Claimant as continent of the bladder and occasionally incontinent of the bowel. ----- documented her findings in the PAS assessment as “client notes she does not have any accidents on herself with her bladder she notes she can get to the bathroom everytime [sic]. Client notes her bowels move daily. Client states she has accidents when she has diarrhea. Client notes she would have an accident twice a month.” During the hearing, the Claimant indicated that she utilizes “pull-ups” and must change her undergarments twice a day because of excessive diarrhea. The Claimant indicated that she was experiencing these problems at the time of the assessment and stated, “nobody wants to tell somebody that they’re messing on themselves.”

Policy requires that a deficit is awarded in the contested area when the individual is assessed at a level three or higher meaning that the individual is incontinent and experiences three or more weekly accidents. 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. Evidence and testimony reveals that during the assessment the Claimant indicated that she

experienced an accident of the bowel twice a month. Therefore, the assessing nurse correctly assessed the Claimant and an additional deficit in the contested area cannot be awarded.

Walking-Ms. Ikerd testified that a deficit is awarded in transferring and walking when the individual requires hands on physical assistance from another person in order to walk or transfer inside the home. ----- assessed the Claimant as a Level 2 Supervised/Assistive device and documented in the assessment that “client does use her walker as she walks in the home. Client did meet me at the door. Gait was slow but steady.” The Claimant was in agreement with the assessing nurse’s findings in the area of transferring and walking; however, she contends that the assessing nurse did not perform a proper evaluation of her abilities because she was not asked to ambulate without the use of her walker. The Claimant indicated that she requires assistance when ambulating and traveling outside the home.

Policy requires that a deficit in the contested area is awarded when the individual is assessed at a Level 3 or higher meaning that the individual requires one or two-person assistance in the home. Evidence reveals that the assessing nurse observed the Claimant ambulate with the use of a walker and assessed the individual as requiring an assistive device. 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 as she did not require hands on assistance from another person to aide in her abilities and an additional deficit in the contested area cannot be awarded.

Medication Administration-Ms. Ikerd testified a deficit is awarded in the contested area when the individual is not capable of administering their own medications. ----- documented her findings in the assessment as “client notes her sister-in-law puts her medications in a weekly container and the client is able to give herself her meds. She denies needing to be reminded to take her meds.” The Claimant indicated that she occasionally needs reminded to take her medications but she is able to administer medications on her own.

Policy requires that a deficit is awarded in the contested area when the individual is incapable of administering their own medications. Testimony indicated that the Claimant is able to administer her own medication with prompting and supervision; therefore, the assessing nurse correctly assessed the Claimant and an additional deficit in the contested area cannot be awarded.

6) 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.

7) 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.

8) 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 did not reveal an additional deficit.
- 4) The Claimant's total number of deficits remains at four; therefore, the Department was correct 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 uphold the action of the Department in denying the Claimant's Aged and Disabled Waiver benefits.

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.

Eric L. Phillips
State Hearing Officer