



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

May 31, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 2, 2012. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid Aged and Disabled Waiver (ADW) Program services based on medical findings.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.5.1.1).

The information submitted at your hearing revealed that the Department was correct to award four deficits on your PAS assessment and to deny ADW services.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny benefits under the ADW Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, Department Representative
Brenda Myers, West Virginia Medical Institute

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-836

**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 May 31, 2012, 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 May 2, 2012, on a timely appeal, filed February 27, 2012.

All persons offering testimony were placed under oath.

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 witness

Kay Ikerd, Department representative

Brenda Myers, Department witness

Presiding at the Hearing was Todd Thornton, 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 decision to deny Aged and Disabled Waiver Program services to the Claimant based on medical findings.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5 – 501.5.1.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5 – 501.5.1.1
- D-2 Pre-Admission Screening (PAS) form dated January 18, 2012
- D-3 Notice of potential denial dated January 24, 2012
- D-4 Notice of decision dated February 9, 2012
- D-5 Additional information dated February 1, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant is an 86-year-old female applicant for Aged and Disabled Waiver (ADW) Services. Brenda Myers, a registered nurse employed by West Virginia Medical Institute (WVMI), completed a Pre-Admission Screening (PAS) assessment (Exhibit D-2) of the Claimant on January 18, 2012, to evaluate medical eligibility for the program. The Department issued a potential denial notice (Exhibit D-3) on January 24, 2012, and a denial notice (Exhibit D-4) on February 9, 2012. Both notices indicated that only four deficits were awarded and that a minimum of five deficits are required for medical eligibility.

- 2) Kay Ikerd, representative for the Department’s Bureau of Senior Services, testified that the applicable policy for this case is from the Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services. At §501.5.1.1, this policy (Exhibit D-1) states as follows:

501.5.1.1 Medical Criteria

An individual must have five deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section	Description of Deficits	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for 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) Ms. Myers testified that based on her January 18, 2012 PAS assessment she awarded the Claimant deficits in four areas: *bathing, dressing, grooming, and vacating the building in the event of an emergency.*
- 4) One additional area was proposed by the Claimant: *walking.* The Claimant testified that she uses a walker to assist herself with ambulation. She testified that she has a history of falls. She noted this in a letter (Exhibit D-5) to the Department, which was reviewed by Ms. Myers. Ms. Myers noted this in comments added to the PAS (Exhibit D-2) form on February 8, 2012, which state in pertinent part:

2/8/12- Received two entries of addl info [sic]. The first one being a copy of the determination letter and the following pages of the PAS. No addl info [sic] pertinent [sic] to changing deficits was included in it. The second item received was a hand written note by the applicant in which she states she did not receive the 5 pts [sic] necessary to qualify but felt like she was not given credit for the use of a walker all the time. In the note she states she cannot be on her feet for a long time and she is not able to cook meals due to tremors and she has old broken bones in her back keeping her from being able to be on her feet too long and she hoped she could be reconsidered. In review of information, RN respectfully has to indicate the information submitted by applicant does not allow me to change any functional deficit. Use of a walker is not considered a deficit per program policy and not being able to cook/prepare meals is not considered a deficit as well per policy. RN unable to make any changes to PAS.- in accordance to program criteria. Resubmitted- BMyers RN

It should be noted that the Claimant did not request a deficit be awarded for the inability to prepare meals during this hearing.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for ADW Program services. The WVMi nurse determined, at the time of the PAS, that the Claimant had four qualifying deficits. Testimony from the Claimant proposed an additional deficit in the area of *walking* due to her use of a walker. Policy clearly requires walking to be assessed at a level requiring one-person assistance for a deficit to be awarded, and the Claimant's use of an assistive device to ambulate does not rise to this level. The Department correctly assessed the area of *walking*.
- 2) With no additional deficits revealed through testimony or evidence, the Department was correct to deny Aged/Disabled Waiver Services to the Claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility requirements.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of May, 2012.

**Todd Thornton
State Hearing Officer**