



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

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

July 23, 2010

RE: -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on the hearing held for ----- on June 30, 2010. Your hearing request was based on the Department of Health and Human Resources' termination of Medicaid Aged and Disabled Waiver (ADW) Program services based on a finding of medical ineligibility.

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, §501.3.2).

The information submitted at your hearing revealed that the Department was correct in its assessment of four deficits and medical ineligibility for the ADW program.

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

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Michael Bevers, Esq., Assistant Attorney General
Kay Ikerd, Department Representative
Kim Sang, West Virginia Medical Institute
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 10-BOR-1023

**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 July 23, 2010, 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 June 30, 2010, on a timely appeal, filed March 18, 2010.

All persons offering testimony were placed under oath.

It should be noted that benefits have been continued through the hearing process.

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

-----, Claimant's Attorney

Michael Bevers, Esq., Department's Attorney

Kim Sang, RN, West Virginia Medical Institute

Kay Ikerd, RN, Bureau of Senior Services

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 terminate Aged and Disabled Waiver Program services to the Claimant based on a finding of medical ineligibility.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3 – 501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1** Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3 – 501.3.2
- D-2** Medical Necessity Evaluation Request, signed by Dr. [REDACTED] on January 13, 2010
- D-3** Pre-Admission Screening (PAS) form, dated March 1, 2010
- D-4** Notice of denial, dated March 17, 2010

VII. FINDINGS OF FACT:

- 1) The Claimant is a 44-year-old male recipient of Aged and Disabled Waiver (ADW) Services. Kim Sang, a registered nurse with the West Virginia Medical Institute (WVMI), completed a pre-admission screening (PAS) assessment of the Claimant on March 1, 2010 (Exhibit D-3) to reevaluate medical eligibility for the program. The Department issued a denial notice (Exhibit D-4) on March 17, 2010. This notice 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 proposed Department action is from the Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services. At §501.3.2, this policy (Exhibit D-1) states, as follows:

501.3.2 MEDICAL CRITERIA

An individual must have five (5) deficits on the Pre-Admission Screening Form (PAS), Attachment 14, 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. Sang identified the four areas in which deficits were awarded from the March 1, 2010, PAS: *bathing, dressing, and grooming, and vacating the building in the event of an emergency*. Ms. Sang explained that her procedure for conducting an assessment is to record her findings into a computer at the time, and, afterwards, review her findings with the individuals present during the assessment. The PAS (Exhibit D-3) noted that, in addition to the Claimant, his Case Manager and Homemaker were present on the day of the assessment.
- 4) The areas identified on the Claimant's behalf in dispute with the Department's PAS assessment findings were *incontinence of bladder, transferring, and walking*.
- 5) The Claimant testified that, with regard to *incontinence of bladder*, that he has accidents five to six times per day. He testified that this is due to his problems with walking. Ms. Sang made the following notes at the time of her assessment, in pertinent part:

Continence: Bowel/Bladder: STATES HE HAS INCONTINENCE OF HIS BLADDER – STATES HE HAS DRIBBLES AT TIMES – STATES IT IS BECAUSE HE CANNOT GET TO THE BATHROOM FAST ENOUGH – HMKR STATES SOMETIMES IT IS BECAUSE HE HAS TROUBLE WITH GETTING UP AT TIMES AND HE CANNOT HOLD IT LONG ENOUGH TO GET TO THE BATHROOM – STATES HE CAN FEEL THE URGE BUT CANNOT GET THERE FAST ENOUGH
- 6) Ms. Ikerd testified regarding the policy supporting a threshold of three accidents per week for an individual to be assessed as 'incontinent', as opposed to 'occasionally incontinent.' She testified that Attachment 14 of the Aged and Disabled Waiver Manual includes a blank PAS form, which denotes occasional incontinence of the bladder or bowels as less than three episodes per week.
- 7) The Claimant's attorney contended that continence should be awarded whether the accidents are due to the Claimant's inability to feel an 'urge' to urinate or they are due to his walking speed. He asked Ms. Sang to testify regarding a PAS from 2009 – not entered into evidence – in which the Claimant was awarded *incontinence of bladder*. Ms. Sang was unable to recall what she had assessed in 2009, and responded that each PAS is a separate review of medical eligibility for the program intended to reflect conditions at that time.
- 8) The definition of incontinence, from *Dorland's Illustrated Medical Dictionary, Twenty-fifth Edition* (W.B. Saunders Company, Philadelphia, p. 773), is "inability to control excretory functions, as defecation (fecal i.) or urination (urinary i.)."

- 9) With regard to *transferring*, Ms. Sang testified that she witnessed the Claimant transfer twice on the day of the assessment, noted this on the PAS form, and reviewed her findings after the assessment. The Claimant testified that he requires one-person assistance with transferring on a daily basis.
- 10) With regard to *walking*, Ms. Sang testified that she observed the Claimant walking – both with and without assistive devices – on the day of the assessment. The Claimant testified that he does “a lot of walking,” but clarified that he walks as much as possible to lose weight and to keep from becoming wheelchair-bound. The Claimant explained that his feet swell during the day, and that later in the day he is unable to walk without one-person assistance.
- 11) Ms. Sang made the following notes in the March 1, 2010, PAS, in pertinent part:

Walking: WITNESSED MEMBER WALK WITHOUT ASSISTIVE DEVICE DURING ASSESSMENT – HE HAS A WALKER TO USE – STATES IN HIS APARTMENT HE BASICALLY JUST HOLDS ON TO THINGS AND THEN HE USES HIS WALKER OUTSIDE HIS HOME – STATES HE HAS HAD FALLS WHEN HIS HMKR [sic] WASN'T THERE – STATES HE HAS CAUGHT HIMSELF. WITNESSED MEMBER WALK AGAIN WITHOUT ASSISTIVE DEVICE AGAIN [sic] DURING ASSESSMENT – HE WALKED INTO THE BATHROOM AND BACK – THE CM [sic] ASKED HIM ON THE WAY BACK IF HE NEEDED HIS WALKER AND HE STATED NO THAT HE COULD DO IT. HE DOES HAVE BRACES ATTACHED TO HIS DIABETIC SHOES FOR HIS LOWER LEGS – HE DID NOT HAVE HIS BRACES ON WHEN AMBULATING DURING ASSESSMENT.

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 on the Claimant's behalf proposed three additional deficits: *incontinence of bladder*, *transferring*, and *walking*. The WVMI nurse witnessed the Claimant transferring and walking during the assessment. The limitations asserted by the Claimant in both areas during the hearing were not noted during the assessment, and the WVMI nurse testified that she reviewed these findings with all individuals present during the assessment. The WVMI nurse's notes regarding walking and transferring provide no indication that the Claimant required one-person assistance, and no clarification was offered when the nurse's findings were reviewed after the assessment. The Department was correct to award no deficits for the areas of *walking* or *transferring*.

- 2) The Claimant offered an unspecified frequency of accidents with regard to *incontinence of bladder* during the assessment, and testified during this hearing that the frequency was five to six times per day; however, during both the assessment and this hearing, he indicated the cause of these accidents was not the inability to feel an urge to urinate, but instead the delay caused by his walking speed. Because incontinence is defined as the ability to control excretory functions, and not the ability to respond timely once an urge is felt, the Department was correct to award no deficit for *incontinence of bladder*.
- 3) With only four deficits established during the assessment, and no additional deficits revealed through evidence or testimony, medical eligibility could not be established, and the decision of the Department to terminate ADW services is correct.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of July, 2010.

**Todd Thornton
State Hearing Officer**