



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Joe Manchin III
Governor

Board of Review
P.O. Box 1736
Romney, WV 26757

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

July 28, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 15, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate 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 possess the correct number of deficits for medical eligibility.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate your benefits and services under the Aged and Disabled (HCB) Title XIX Waiver Services Program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, BoSS

WVMI

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

-----,

Claimant,

v.

Action Number: 10-BOR-1282

**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 July 15, 2010 on a timely appeal, filed April 21, 2010. It shall be noted that the hearing was originally scheduled for June 30, 2010 and rescheduled based on the Department's request.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver (ADW) is administered by the West Virginia Department of Health & Human Resources. 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

-----, Homemaker Aide, [REDACTED]

-----, RN Supervisor, [REDACTED]

-----, RN, [REDACTED]

Angel Khosa, Program Manager, Bureau of Senior Services

Stacey Leadman, Project Manager, 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 is correct in its proposal to terminate the Claimant's 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 Medical Necessity Evaluation Request Form dated February 26, 2010
- D-3 Pre-Admission Screening Assessment Form dated March 30, 2010
- D-4 Notice of Denial dated April 16, 2010

Claimants' Exhibits:

- C-1 Letter from [REDACTED] III, M.D. dated May 3, 2010

VII. FINDINGS OF FACT:

- 1) On March 30, 2010, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for her continued eligibility for the Aged and Disabled Waiver Program using Exhibit D-3, Pre-Admission Screening Assessment Form (PAS). Karen Keaton, RN, WVMI completed the PAS Assessment on the scheduled date but was unable to attend the hearing process. Ms. Stacey Leadmen, Project Manager, WVMI with agreement from the Claimant, testified on Ms. Keaton's findings from the assessment in question.
- 2) Ms. Leadman related that the assessing nurse completed the assessment with the Claimant and her Homemaker Aide. The assessing nurse identified the Claimant's deficits as eating, bathing, grooming and dressing from her evaluation. The assessing nurse noted in the PAS assessment that she reviewed her findings with the case manager from [REDACTED] and no additional deficits were identified during those conversations.

- 3) The Claimant was notified April 16, 2010, via Exhibit D-4, Notice of Denial, that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice states 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 the areas of eating, bathing, grooming, and dressing.

- 4) The Claimant and her representatives contend that medical eligibility exists for the ADW Waiver Program and that the Claimant is demonstrating functional deficits in the areas of vacating during an emergency, bladder incontinence, and walking.

The following addresses the contested areas:

Walking- -----, RN Supervisor, [REDACTED] testified that the Claimant's medical conditions impair her ability to walk. -----submitted Exhibit C-1, Letter from [REDACTED] M.D. dated May 3, 2010 which documents in pertinent part:

----- is a patient in my practice with the diagnoses of atrial fibrillation, hypertension, morbid obesity, hypothyroidism and chronic skin ulcers. As of April 30, 2010, the date of her evaluation for the Aged [sic] and Disabled Medicaid Waiver, she was not able to ambulate without the use of a wheel chair. I would think that in the case of an emergency, she would need assistance to safely vacate her home.

-----indicated that the Claimant suffers from generalized pain and weakness in her knees and legs which inhibit her ability to walk. -----testified that an evaluation of the Claimant in the days prior to the scheduled hearing found that the Claimant was able to transfer from her bed but was slow in her ability to walk, requiring frequent stops to catch her breath and rest. The provided testimony is irrelevant to the PAS assessment as it is not congruent to the Claimant's abilities at the time of the evaluation and is an appraisal of the Claimant's current condition. --- --related that the Claimant was previously unable to walk ten feet without stopping multiple times prior to her most recent evaluation. The assessing nurse noted in the PAS assessment that the Claimant walks with a walker short distances and she reported foot swelling during the evaluation.

The PAS assessment indicated that the Claimant was evaluated at a Level 2 for the use of a supervised assistive device. Pursuant to existing policy, a functional deficit is awarded when the individual requires physical assistance to ambulate. While testimony indicates that the Claimant has some difficulties ambulating, evidence failed to provide that the Claimant

required hands on assistance to aide in her ability. Based on testimony and evidence the Claimant was not demonstrating a functional deficit at the time of the assessment, therefore an additional deficit cannot be awarded in the area of walking.

Bladder Incontinence- -----testified that the Claimant informed her during previous evaluations that she experiences bladder leakage everyday and she wears pads for such difficulties. -----stated that the Claimant has a physician's prescription for bed pads which she has required the use of such incontinence supplies for the last year. The assessing nurse noted in the PAS assessment that the Claimant did not indicate the use incontinence supplies at the assessment but noted that her bed is padded for occasional accidents. In Exhibit D-3, PAS assessment, the assessing nurse noted that she questioned those present about the frequency of incontinence episodes and was informed that the Claimant experiences an average of one episode of incontinence a week.

Testimony indicates that the Claimant experiences frequent episodes of bladder incontinence. Although the Claimant may be experiencing frequent episodes of bladder incontinence, evidence did not indicate that the Claimant demonstrated a functional deficit of three or more episodes a week at the time of the assessment. Information relayed at the assessment indicated one episode of incontinence a week and the assessing nurse acted accordingly to reported information; therefore an additional deficit cannot be awarded in the contested area.

Vacating During an Emergency- -----, RN, [REDACTED] testified that she has assisted the Claimant from her start date on the ADW program. ----- testified that the Claimant has previously utilized in home physical therapy and even with such therapy the Claimant can only walk six to eight steps at a time. ----- stated that the Claimant cannot get out of the bedroom alone as the nearest exit is twenty-five feet away. Testimony indicated that the Claimant's poor ambulatory abilities and the distance to the exit would make it difficult for her to vacate alone. -----indicated that the Claimant utilizes a walker to assist her in maneuvering in her home, as her home is not big enough to maneuver a wheelchair. -----referenced Exhibit C-1, in which the Claimant's physician believes she would need assistance to safely vacate her home as she requires the use of a wheelchair. -----, the Claimant's Homemaker Aide added that the Claimant requires occasional assistance in transferring and this would make it difficult for her to vacate in the event of an emergency. Ms. Leadman stated that the assessing nurse reviewed the PAS assessment with all individuals available during the assessment and the Claimant reported that she had practiced and knew she could do it [vacate her residence]. Additionally, the assessing nurse noted in the assessment that the Homemaker Aide stated that the applicant sometimes underplays her condition. The Claimant testified that she did not inform the assessing nurse that she could vacate her residence alone and only stated that she reported that she has practiced vacating. The Claimant testified that the thought of vacating without assistance is a source of her worry and she is unable to accomplish such task without assistance. The Claimant contends that she is unable to ambulate at least 10 feet without interruption and cannot vacate her premises without assistance.

The Claimant was assessed as requiring supervision in her ability to vacate her home during an emergency. Credible testimony indicates that the Claimant would have difficulties vacating as the nearest exit it over twenty-five feet away and Claimant is frequently interrupted while ambulating due to her medical condition. The Claimant's physician noted that the Claimant requires the use of a wheelchair in her home and supported testimony indicated that the Claimant's home environment is not wheelchair accessible, indicating that the Claimant must

manage to ambulate with other assistive devices. Whereas the testimony provided specific information to the Claimant's inability to vacate, a functional deficit in the contested area is awarded.

4) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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.

5) 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 A/DW 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.

6) 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 B
(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 dictates that in order to be determined eligible for services under the Aged and Disabled Waiver Program an individual must be deficient in at least five (5) 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 eating, bathing, dressing, and grooming.
- 3) Evidence presented during the hearing established an additional deficit to the Claimant in the area of vacating during an emergency.
- 4) The Claimant demonstrates five (5) qualifying deficits; therefore the Department was incorrect in its proposal to terminate medical eligibility under the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate the Claimant's benefits and services 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 July 2010.

**Eric L. Phillips
State Hearing Officer**