



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26555

Joe Manchin III  
Governor

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

July 19, 2010

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C/O -----  
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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 13, 2010. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through the Aged & 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/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged/Disabled (HCB) Title XIX Waiver Services 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]

Information submitted at the hearing demonstrates that you require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the Department's action to deny your application for benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI

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

-----,

**Claimant,**

v.

**Action Number: 10-BOR-1333**

**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 13, 2010 on a timely appeal filed May 17, 2010.

**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

-----, Daughter/Attorney-in-Fact

-----, RN, Case Manager (CM), [REDACTED]

-----, Coordinator, Adult Daycare Program, [REDACTED]

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

Debra Lemasters, RN, West Virginia Medical Institute (WVMI) - Participated telephonically

Presiding at the hearing was Thomas E. Arnett, 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 action to deny the Claimant's application for benefits and services through the Medicaid Aged & Disabled Home and Community-Based Waiver Services Program.

**V. APPLICABLE POLICY:**

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed on March 12, 2010
- D-3 Notice of Potential Denial dated March 15, 2010
- D-4 Notice of Termination/Denial dated April 1, 2010

**Claimant's Exhibits:**

- C-1 Office Visit notation from [REDACTED] M.D. (January 28, 2010)
- C-2 Fair Program Activity Plan Form – updated February 11, 2010
- C-3 Mini-Mental State Examination (MMSE) administered on February 11, 2010

**VII. FINDINGS OF FACT:**

- 1) On March 12, 2010, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program (Exhibit D-2, Pre-Admission Screening (PAS) form).
- 2) On or about March 15, 2010, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

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, Chapter 501.3.2.

Based on your PAS you have deficiencies in only 4 areas – Vacating a Building, Eating, Bathing and Grooming.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks. It should be noted that no additional information was received.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated April 1, 2010 (Exhibit D-4). 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 a 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, Eating, Bathing and Grooming.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates four (4) deficits but indicated the medical assessment completed in March 2010 fails to identify five (5) functional deficits as required by ADW medical eligibility policy.
- 5) The Claimant's daughter/representative contends that the Claimant should have been found medically eligible as she is also demonstrating a functional deficit in **Orientation, Medication Administration and Incontinence (Bowel)**.

**Incontinence** – Debra Lemasters, Registered Nurse (RN) from West -----Medical Institute (WVMI), documented that the Claimant's daughter denied that the Claimant had episodes of bowel incontinence. There was no diagnosis of incontinence provided by the referring physician and there was no information to indicate the Claimant was using incontinent supplies. While there was testimony received at the hearing to indicate episodes of bowel incontinence are presently occurring, there is insufficient evidence to indicate the Claimant was demonstrating a functional deficit (three (3) or more episodes of bowel incontinence a week) at the time of the assessment. Based on the evidence, the Claimant was not demonstrating a functional deficit in incontinence at the time of the assessment.

**Orientation** – The Claimant presents a diagnosis of Dementia, however, RN Lemasters testified that the Claimant was oriented x3 (person, place and time) on the day of the assessment. The Claimant's witness testified that the Claimant has episodes when she is not oriented – intermittent orientation. Pursuant to existing policy, an individual must be totally disoriented or comatose in order to qualify for a deficit. Although it is apparent the Claimant is demonstrating some difficulty in this area, she fails to qualify at a level 3 (totally disoriented). Based on the evidence, the Claimant does not qualify for a deficit in orientation.

**Medication Administration** – The Claimant was assessed as requiring prompting and supervision as the Claimant’s daughter reported that she places her mother’s medication in a cup and that her mother can pick the cup up and place the medication in her mouth, with prompting. However, testimony received at the hearing indicates that medication placed in a cup or the Claimant’s hand is frequently dropped on the floor. The Claimant’s daughter provided credible testimony to indicate that medications must often be placed in her mother’s mouth and that her mother must be watch closely because she will spit the pills out. According to the Claimant’s daughter, this was occurring at the time of the assessment. Whereas the testimony presented specific to medication administration is credible, a functional deficit in medication administration is established.

6) 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.

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 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.

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 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) Medicaid policy requires that an individual must demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded four (4) deficits on a PAS completed by WVMI in March 2010 – Vacate a Building, Eating, Bathing and Grooming.
- 3) The evidence submitted at the hearing confirms the Claimant was demonstrating an additional deficit in Medication Administration when the assessment was completed in March 2010.
- 4) Whereas the Claimant demonstrated five (5) program qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program is established.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Department's action to deny the Claimant's application for benefits and services through the Medicaid, Aged/Disabled, Title XIX (HCB) 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.**

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**Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review**