



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

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

August 19, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law for your hearing held on August 17, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate her 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 reveals that your medical condition no longer requires a sufficient number of services and the degree of care necessary to medically qualify you for the Aged/Disabled Home and Community Based Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

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

cc: Chairman, Board of Review
Kay Ikerd, RN, BoSS
[REDACTED]
WVMI

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

-----,

Claimant,

v.

Action Number: 10-BOR-1409

**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 August 17, 2010 on a timely appeal filed May 28, 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

-----, Claimant's daughter

-----, LSW, CM, [REDACTED]

Kay Ikerd, RN, BoSS (participated telephonically)

Debra Lemasters, RN, 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 proposal to terminate the Claimant's benefits and services provided 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, Chapter 500, Section 501
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services (PAS) dated April 27, 2010
- D-3 Notice of Potential Denial dated April 30, 2010
- D-4 Notice of Termination/Denial May 18, 2010

VII. FINDINGS OF FACT:

- 1) On April 27, 2010, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged and Disabled Waiver Services Program, hereinafter ADW Program [See Exhibit D-2, Pre-Admission Screening (PAS) completed on 4/27/10].
- 2) On or about April 30, 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 3 areas – Vacating a building, Eating 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/reviewed.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated May 18, 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 3 areas – Vacate a Building, Eating 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 demonstrated three (3) deficits but indicated the medical assessment completed in April 2010 fails to identify five (5) functional deficits as required by ADW medical eligibility policy. In addition, the Claimant was provided an opportunity to submit additional medical documentation during the two-week period following the Potential Denial Notice (D-3), however, no information was submitted.
- 5) The Claimant and his representatives contend that he remains medically eligible to participate in the ADW Program as he is also demonstrating a functional deficit in Bathing, Orientation and Medication Administration.

The following addresses findings specific to each of the contested areas:

Medication Administration – In order to qualify for a deficit in Medication Administration, the individual must demonstrate the need for others to place medications in their mouth, tube, eye, or administer injections. Debra Lemasters, a Registered Nurse (RN) with West Virginia Medical Institute (WVMI), testified that her assessment revealed that the Claimant's daughter places his daily medication in a cup for him but that he puts his medications in his mouth. RN Lemasters noted that the Claimant's daughter draws-up his insulin due to difficulty determining the correct quantity, but he administers his own shot. It was also noted that the Claimant draws-up his Lantus without assistance and that he administers the shot independently. Testimony received on behalf of the Claimant reveals that he must be reminded to check his blood-sugar levels and take his medications. While the Claimant's daughter purported she must administer his evening insulin shot, she did not specify why her father is unable to administer this shot when he administers the morning shot independently. Based on the evidence, the Claimant was appropriately assessed as requiring prompting and supervision. As a result, a deficit cannot be established in the area of Medication Administration.

Orientation – Testimony presented at the hearing reveals that the Claimant has occasions when he cannot remember people and he gets confused. According to his daughter, he recently insisted that he lived in the home adjacent to where they live. RN Lemasters testified that memory problems are not the same as orientation. RN Lemasters testified that the Claimant was alert and oriented x3 (person, place and time) on the day of the assessment and that she was advised he is always oriented x3. In order to qualify for a deficit in orientation, the individual must be disorientated x3 (or comatose) at all times. While the evidence indicates the Claimant may be experiencing episodes of intermittent disorientation, there is no evidence to indicate the Claimant is demonstrating a functional deficit (disoriented at all times) in orientation.

Bathing – Policy dictates that a functional deficit is identified in bathing when the individual demonstrates the need for physical assistance. The Claimant’s daughter reported at the time of the assessment that she had to assist him transfer out of the tub on one occasion in March 2010 but reported he can wash himself. Documentation by RN Lemasters on page 7 of 9 states – “Daughter sits [sic] up his bath for him and they both stated he can wash himself but does need prompting to take a bath.” Because the Claimant’s daughter is concerned about her father’s safety, she believes that someone must be home when he takes a bath. While the Claimant’s representatives expressed valid concerns for safety, there is insufficient evidence (physical impairments, etc...) to indicate the Claimant routinely requires physical assistance transferring in-and-out of the tub or physical assistance with bathing. A deficit in bathing cannot be established.

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 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:
(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 three (3) deficits on a PAS completed by WVMI in April 2010 – Vacate a building, Eating and Grooming.
- 3) The evidence submitted at the hearing fails to confirm the Claimant was demonstrating any additional deficits in April 2010.
- 4) Whereas the Claimant was demonstrating only three (3) program qualifying deficits, the Department was correct in its determination that continued medical eligibility for participation in the Aged/Disabled Waiver Program could not be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of August, 2010.

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