



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

August 30, 2010

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-----, Attorney-In-Fact  
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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 25, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny your medical 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 Waiver program is based on current policy and regulations. The Aged/Disabled (HCB) Title XIX Waiver Services program is granted to those individuals who meet all eligibility requirements. One of the 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 [Aged/Disabled (HCB) Services Manual Section 501].

The information which was submitted at your hearing revealed that you do not meet the medical eligibility requirements for the Aged and Disabled Waiver program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your application for benefits and services under the Aged and Disabled Waiver program.

Sincerely,

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

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

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

-----,

**Claimant,**

v.

**Action Number: 10-BOR-1462**

**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 25, 2010 on a timely appeal, filed June 14, 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's Attorney-In-Fact and son  
Kay Ikerd, RN, Bureau of Senior Services (BoSS)  
Sarah "Betsy" Carpenter, RN, West Virginia Medical Institute (WVMI)

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 the Department was correct in its decision to deny the Claimant's application 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 Pre-Admission Screening assessment dated May 18, 2010
- D-3 Notice of Potential Denial dated May 19, 2010
- D-4 Notice of Decision dated June 7, 2010
- D-5a Additional information from [REDACTED] D.O. dated May 28, 2010
- D-5b Additional information from [REDACTED] D.O. dated June 14, 2010
- D-5c Additional information from [REDACTED] D.O. dated June 15, 2010
- D-5d Additional information from [REDACTED] D.O. dated June 1, 2010

**VII. FINDINGS OF FACT:**

- 1) On May 18, 2010, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant to determine her medical eligibility for the Aged and Disabled Waiver program. As part of the assessment, the nurse utilized Exhibit D-2, Pre-Admission Screening assessment.
- 2) On May 19, 2010, the Claimant was notified by Exhibit D-3, Notice of Potential Denial that she may be ineligible for services provided by the Aged and Disabled Waiver program. This notice documents 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-Vacate a Building, Bathing, and Grooming.

This notice allowed the Claimant an opportunity to submit additional information regarding her medical condition to WVMI within a two week timeframe from the date of issuance of such notice.

3) On May 28, 2010, WVMI received Exhibit D-5a, Additional Information from [REDACTED] D.O which documents:

----- requires help with bowel and bladder incontinence 3-4 times per week. She also requires assistance ambulating and medications.

On June 14, 2010, WVMI received Exhibit D-5b, Additional Information from [REDACTED] D.O which documents:

Patient needs assistance with opening cans/jars due to progressive dementia, also needs medications to be given to her due to progressive dementia.

On June 15, 2010, WVMI received Exhibit D-5c, Additional Information from [REDACTED] D.O which documents:

We had previously asked for this case to stay open until new info be [sic] sent after appt. Her case was denied and closed anyway. Please re-open case with added information. 1. Vacate Bldg, 2. Bathing, 3. Grooming, 4. continence 5. Orientation and 6. Administering Medications

The assessing nurse noted in the PAS assessment (Exhibit D-2) the following information:

Received additional documentation signed and dated by referring physician 5/27/10. Documentation included rx reporting "requires help for bowel and bladder incontinence 3-4x per week, she also requires assistance ambulating and with medication due to progressive dementia." Updated functional levels of PAS to include incontinence of bowel and bladder. The functional levels of ambulation and medication administration will remain the same as determined the day of the PAS, the applicant was witnessed to ambulate independently inside her home without the aide [sic] of a medical equipment device without holding onto the furniture/walls, she was already assessed at requiring supervision/assistive device for transferring an ambulation the day of the PAS. The applicant was already determined to require prompting and supervision with her medication regimen secondary to the dx of dementia, the day of the PAS she was physically and cognitively able to place the pills in her own mouth. The applicant reportedly was home alone for long periods of time without hospitalizations in the past year and without seeking emergency evaluation secondary to falls inside home, the son nor the applicant reported hx of the applicant being unable to physically place her current rx meds in her own mouth. The applicant was only disoriented to time the day of the PAS, she was physically and cognitively able to place her own rx meds in her mouth.

4) The Claimant was notified on June 7, 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 documents 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 4 areas-Vacate a building, bathing, grooming, and continence.

- 5) -----, the Claimant's Attorney-In-Fact contends that additional deficits should be awarded in the areas of eating, medication administration and orientation.

The following addresses the contested areas:

**Eating-In** regards to the aspect of eating, the Claimant cannot open a can, bottle, or a container to assist in her meal preparation. ----- testified that his mother must rely on other individuals to help prepare her meals. Ms. Kay Ikerd, RN, BoSS explained that the assessing nurse can only assess the individual's eating ability and that policy does not consider meal preparation. The assessing nurse documented in the PAS assessment that the Claimant reported that she was able to feed herself, could cut up her own foods, and could peel an apple.

Testimony indicated that the Claimant could feed herself and only relies on others in the aspect of meal preparation. As the Claimant has the ability to cut up and ingest foods, without assistance, she does not meet the requirements to be considered for a deficit in the functional ability of eating; therefore an additional deficit **cannot** be awarded in the contested area.

**Medication Administration**----- explained that his mother's condition of progressive dementia causes her to forget to take her medications. ----- stated that his mother is physically able to put a pill in her mother and obtain a glass of water. The primary concern is that she does not remember to take her medications and that she must be prompted in this daily activity. Ms. Ikerd testified that a deficit is awarded in medication administration when an individual cannot pick up medications and place them in their own mouth. Testimony indicated that a deficit is awarded to individuals who require the crushing of their pills or who are in need of medications to be administered through a feeding tube. The assessing nurse documented in the PAS assessment that the Claimant denied the need to have medications cut or crushed to aid in swallowing. Additionally, the assessing nurse noted that the Claimant reported difficulties in opening prescription bottles and that ----- reported that the family prompts and supervises the Claimant's medication regimen.

Testimony indicated that to be awarded a deficit in the functional ability of medication administration, an individual must require assistance to place medications in their mouth, require the cutting or crushing of the medication, or have medications administered through a feeding tube. The Claimant possesses the ability to pick up and administer her own medication and she only requires prompting to commence the activity; therefore a deficit in the contested area **cannot** be awarded.

**Orientation**----- cited the physician's documentation, Exhibit D-5b concerning his mother's progressive dementia and how it relates to her orientation. ----- testified that his mother forgets

things, such as meals which she has just eaten, on a daily basis. ----- believes that due to his mother's condition of progressive dementia that she may have overstated her abilities on the day of the assessment. ----- believes that the short time the assessing nurse spent with his mother is not a true reflection of her abilities on a normal basis. Ms. Ikerd testified that a deficit in orientation is awarded when an individual is consistently disoriented to person, place, and time. The assessing nurse documented in the PAS assessment that the Claimant was oriented to person and place but unaware of time during the assessment evaluation.

Testimony indicated that the Claimant's progressive dementia inhibits her ability to remember some functional tasks. During the assessment, the Claimant was oriented to person and place and exhibited difficulties with the time aspect of the evaluation. While the evidence indicates that the Claimant may be experiencing episodes of intermittent disorientation, there is no evidence to suggest the Claimant is disoriented at all times; therefore a functional deficit in the contested area **cannot** be awarded.

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) 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 vacating a building, bathing, grooming, and incontinence.
- 3) Evidence presented during the hearing did not establish any additional functional deficits. The Claimant's total number of deficits awarded is four.
- 4) The Claimant demonstrates four qualifying deficits; therefore the Department was correct in its decision to deny the Claimant's medical eligibility under the Aged and Disabled Waiver program.

### **IX. DECISION:**

It is the decision of the State Hearing officer to **uphold** the decision of the Department to deny the Claimant's medical eligibility for 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 August 2010.**

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**Eric L. Phillips  
State Hearing Officer**