



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

August 19, 2010

-----for

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 17, 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 fails to demonstrate that you require a sufficient number of services and the degree of care to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying 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-1465**

**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 21, 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 daughter/representative  
Kay Ikerd, RN, Bureau of Senior Services (BoSS)  
Debra Lemasters, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

All parties participated via telephone conference

**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 February 4, 2010
- D-3 Notice of Potential Denial dated February 8, 2010
- D-3a Additional information – Correspondence from the Claimant received May 21, 2010 accompanied by CT Results from August 2009 and Correspondence from the Claimant received on February 18, 2010
- D-4 Notice of Termination/Denial dated March 2, 2010

**VII. FINDINGS OF FACT:**

- 1) On February 4, 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 February 8, 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, Bathing, Grooming and Dressing.

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 correspondence received on February 18, 2010 (included in D-3a) was received and considered before a final determination was made. The Department noted that little weight was given to the information received as it was not provided by a physician or independent qualified medical professional.

- 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, Bathing, Grooming and Dressing.

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 February 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 **Medication Administration, Wheeling, Transferring and Incontinence (Bowel)**.

**Incontinence** – Debra Lemasters, a Registered Nurse (RN) employed by West Virginia Medical Institute (WVMI), testified that the Claimant reported bowel incontinence “every once in a while, but not weekly” and indicated that incontinence supplies (Depends) were used as a precautionary measure. RN Lemasters further purported that there was no diagnosis of incontinence provided by the referring physician and the Claimant denied having any episodes of bladder incontinence. While there was testimony received at the hearing to indicate episodes of bowel incontinence are occurring more frequently, there is insufficient evidence to indicate the Claimant was demonstrating a functional deficit (3 or more episodes of incontinence, bowel or bladder, 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.

**Medication Administration** – The Claimant was assessed as independent with medication administration as RN Lemasters testified the Claimant reported she takes her medications out of the pill bottle and places it in her mouth, and she can draw her insulin and administer her shot. The Claimant denied requiring prompting and supervision and those present at the assessment agreed. Individuals who qualify for a deficit in this area would require that their medications be placed in their mouth, tube, eyes, etc... Based on the information received at the assessment, the Claimant was appropriately assessed as independent with medication administration.

**Transferring** – In order to qualify for a deficit in transferring, policy indicates the individual must require hands-on physical assistance to transfer. RN Lemasters testified that she observed the Claimant transfer in-and-out of her wheelchair with the support of the wheelchair armrest and she was advised that the Claimant uses the armrest of her living room chair, the rail of her hospital bed and a grab bar on the wall by the commode for support during transfer. RN Lemasters noted that the Claimant had no loss of balance when she observed her transferring. The evidence reveals that the Claimant reported and/or demonstrated the ability to transfer without physical assistance. As a result, a deficit cannot be awarded in transferring.

**Wheeling/Walking** – Policy dictates that a deficit can only be awarded in wheeling if the individual is assessed at a level 3 or higher (requires physical assistance) in walking. While the Claimant’s representative indicated that someone typically holds on to her mother for stability when ambulating, RN Lemasters observed the Claimant ambulating with her walker with the homemaker/caregiver supervising, and noted the Claimant did not require hands-on physical assistance. RN Lemasters documented that the Claimant’s gait was slow and noted that she would stop walking, stand for a short period, and then continue with ambulation. The Claimant’s homemaker/caregiver reported that they [she and the Claimant] walk around the entire length of the kitchen 2 or 3 times daily. While it is clear the Claimant is experiencing some difficulties with ambulation, there is insufficient evidence to indicate the Claimant required hands-on physical assistance with walking at the time of the assessment. As a result, a deficit cannot be awarded in the functional area of wheeling.

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 February 2010 – Vacate a Building, Bathing, Grooming and Dressing.
- 3) The evidence submitted at the hearing fails to confirm that the Claimant was demonstrating any additional deficits when the assessment was completed in February 2010.
- 4) Whereas the Claimant demonstrated only four (4) program qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** 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 August, 2010.**

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