



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

September 10, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 1, 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 Medicaid 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/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 and 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-1526

**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 September 1, 2010 on a timely appeal filed June 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

-----, RN, [REDACTED]

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

Debra Lemasters, RN, West Virginia Medical Institute (WVMI) (Participate 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 May 88, 2010
- D-3 Notice of Potential Denial dated May 20, 2010
- D-4 Notice of Termination/Denial dated June 8, 2010

Claimant's Exhibits:

- C-1 Correspondence from [REDACTED] M.D., FACC, dated June 9, 2010 (Received June 21, 2010)

VII. FINDINGS OF FACT:

- 1) On May 18, 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 May 20, 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, Grooming and Continence.

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 submitted/reviewed within the two-week period.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated June 8, 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, Grooming and Continence.

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 three (3) deficits (vacating, grooming and bladder incontinence) but indicated the medical assessment completed in May 2010 fails to identify five (5) functional deficits as required by ADW medical eligibility policy.
- 5) The Claimant contends that she should have been found medically eligible as she is also demonstrating a functional deficit in **Bathing, Walking and Medication Administration**. The following will address the findings in each of the contested areas. Exhibit C-1 was accepted into evidence but given limited weight as it was received four weeks after the assessment (June 21, 2010) was completed.

Bathing – In order to qualify for a deficit in bathing, policy indicates that the individual must require hands-on physical assistance to bathe. The Claimant's representative, -----, RN, [REDACTED] questioned why grooming was identified as a deficit but a deficit in bathing was not awarded. RN Lemasters explained that grooming was awarded because the Claimant must stand in the shower and steady herself with one hand while washing her hair. While it was noted that the Claimant loaned her shower chair out (indicating balance would not be a barrier and a deficit in grooming may not have been awarded), RN Lemasters gave the Claimant a deficit in grooming because washing hair one-handed is difficult. RN Lemasters went on to say that washing the body one-handed, with the assistance of a long handled brush used by the Claimant, can be done. A review of Exhibit D-2 (page 7 of 9) reveals that the Claimant denied needing physical assistance with transferring in-and-out of the tub and reported that she can reach all areas, wash herself, and that she uses a long handled brush to wash her back. In exhibit C-1, Dr. [REDACTED] indicates the Claimant could use some assistance with bathing, however, this generalized statement fails to address why she is functionally deficit in bathing. Based on the evidence, the Claimant was not demonstrating a deficit in bathing.

Walking – The Claimant’s representative noted that the appeal for a deficit in walking is related to the Claimant’s shortness of breath and chest pain due to coronary artery disease. The Claimant testified that balance is sometimes an issue and that she must hold on to the armchair to get her balance before ambulating. A review of Exhibit D-2 (page 8 of 9) reveals that RN Lemasters documented observing the Claimant ambulate independently in her residence on several occasions and the Claimant ambulated into the hearing site without physical assistance. In Exhibit C-1, Dr. [REDACTED] notes the Claimant can ambulate only short distances, however, as noted in PAS (D-2, Section #26), all activities of daily living are assessed based on the individual’s functional ability in their home. While it is clear that the Claimant is experiencing some difficulties with ambulation due to balance and endurance, policy dictates that a deficit can only be awarded in walking if the individual is assessed at a level 3 or higher (requires physical assistance) in walking. The evidence submitted at the hearing fails to meet that standard and a deficit cannot be awarded.

Medication Administration – The Claimant was assessed as being independent with administering her medications by RN Lemasters at the time of the assessment. RN Lemasters referred to documentation found in Exhibit D-2, page 9 of 9, and testified that the Claimant reported she takes her medications out of her pill bottles and places her medications in her mouth, and that she draws-up and gives her own insulin injections. Consistent with Dr. [REDACTED]’s written statement (C-1), RN Loborec contends that the Claimant requires prompting and supervision with medication administration. Prompting and supervision, however, does not qualify for a deficit as policy requires that medications must be placed in the individual’s mouth, tube, eyes, etc..., in order to qualify for a deficit. Based on the evidence, the Claimant does not qualify for a deficit in medication administration.

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 three (3) deficits on a PAS completed by WVMI in May 2010 – Vacate a Building, Grooming and Continence (bladder).
- 3) The evidence submitted at the hearing fails to confirm that the Claimant was demonstrating any additional deficits when the assessment was completed in May 2010.
- 4) Whereas the Claimant demonstrated only three (3) 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 September, 2010.

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