



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

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

November 29, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 19, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical eligibility under 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 your hearing reveals that you do not meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services
-----, [REDACTED] WV

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

-----,

Claimant,

v.

Action Number: 10-BOR-1852

**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 via telephone conference call on October 19, 2010, on a timely appeal filed August 3, 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

-----, Central WV Aging Services, Claimant's representative

-----, [REDACTED] Claimant's witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's representative

Stacy Leadman, RN, West Virginia Medical Institute, Department's witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to terminate Claimant’s Medicaid eligibility for the Aged and Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community-Based Services Manual Sections 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 conducted on June 24, 2010
- D-3 Notice of Potential Denial dated July 7, 2010
- D-4 Notice of Denial dated July 21, 2010

VII. FINDINGS OF FACT:

- 1) The Claimant applied for the Title XIX Aged and Disabled Waiver Program and his application was denied on July 21, 2010. (Exhibit D-4.)
- 2) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.3.2 (Exhibit D-1) MEDICAL CRITERIA states in pertinent part:

An individual must have five (5) deficits on the Pre Admission Screening (PAS), Attachment 14, 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.

- 3) Department's witness testified that she conducted a pre-admission screening or PAS (Exhibit D-2) on June 24, 2010 in the Claimant's home and determined that he did not meet the medical eligibility criteria for the Program. She testified that the Claimant received three (3) deficits on the PAS assessment in the areas of vacating a building in the event of an emergency, eating and walking.
- 4) The Department sent the Claimant's case management agency, [REDACTED] a Notice of Potential Denial (Exhibit D-3) on February 1, 2010. The form explained that if Claimant or his representatives believed there was additional information regarding his medical condition that was not considered, they should submit it within the next two weeks to WVMI.
- 5) The Department sent the Claimant a Notice of Denial (Exhibit D-4) dated July 21, 2010. The notice was addressed to Claimant and mailed to [REDACTED]
- 6) Claimant's representative stated during the hearing that she was present for the PAS and agreed with it. She testified that she felt he needed help with dressing, bathing and grooming. However, she added that Claimant refused to allow his home health personnel to help him in those areas. She stated that for this reason, she agreed with the conclusions reached on the June 24 PAS.
- 7) Claimant stated during the hearing that he is wheelchair-bound. He stated that he lives in a handicapped-accessible apartment so he had rails, handholds, and other aids to help him with bathing and other activities. He stated that he could use help in transportation and food preparation. Neither Claimant, his representative nor his witness made a substantial rebuttal to the findings of the PAS.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. On his PAS that was performed on June 24, 2010, Claimant was assessed with three deficits, for vacating a building in the event of an emergency, eating and walking.

- 2) The Department properly notified the Claimant by sending a Potential Denial Notice to his Case Management Agency on July 7, 2010. No additional information was provided during the two-week timeframe awarded Claimant in the Potential Denial Notice.
- 3) Claimant's representative stated that she was present when the PAS was conducted and agreed with the conclusions reached on it.
- 4) Claimant received three (3) deficits in June 2010 in conjunction with his Aged/Disabled Waiver Program medical eligibility review in the areas of vacating a building in an emergency, eating and walking. Neither Claimant, his representative nor his witness were able to offer substantive evidence that would result in Claimant receiving more deficits than these.
- 5) The required five (5) deficits have not been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny the Claimant's medical eligibility under the 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 29th Day of November, 2010.

**Stephen M. Baisden
State Hearing Officer**