



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
-----

Joe Manchin III  
Governor

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

February 3, 2010

-----  
-----  
-----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 7, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Medicaid Eligibility under the Aged and Disabled (HCB) Title XIX Waiver 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 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]

The information which was submitted at your hearing revealed that you did not have the required number of deficits to remain medically eligible for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to Uphold the proposal of the Department to terminate your Aged and Disabled Waiver Program Services.

Sincerely,

Eric Phillips  
State Hearing Officer  
Member, State Board of Review

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

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-2024**

**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 concluded on February 3, 2010 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 January 7, 2010 on a timely appeal, filed October 13, 2009.

It should be noted here that the claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination.

**II. PROGRAM PURPOSE:**

The Aged and Disabled Waiver (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

-----, Homemaker and Claimant's granddaughter

-----, RN Case Manager, [REDACTED]

-----, Homemaker RN, [REDACTED]

Kay Ikerd, RN, BoSS (participated telephonically)

Tammy Kessell, RN, WVMI (participated telephonically)

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 terminate the Claimant's 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 September 4, 2009
- D-3 Notice of Potential Denial dated September 11, 2009
- D-4 Additional Information submitted by [REDACTED] M.D.
- D-5 Notice of Denial dated October 7, 2009

**VII. FINDINGS OF FACT:**

- 1) On September 4, 2009, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for her continued eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, the Pre-Admission Screening Assessment (PAS).
- 2) On September 11, 2009, 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 in pertinent part documents:

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 Wavier, Policy and Procedures Manual, Chapter 503.2

Bases on your PAS you have deficiencies in only 4 areas, Bathing, Grooming, Dressing, Continence.

This notice allowed the Claimant to submit additional information regarding her medical condition to WVMI within a two week timeframe.

- 3) On September 21, 2009 Exhibit D-4, Additional Information by [REDACTED] M.D, was submitted to the assessing nurse. This exhibit documents the following:

“Pt would unlikely [sic] to vacate from home effectively and on time in case of disaster or fire”

- 4) The Claimant was notified on October 7, 2009 via Exhibit D-5, 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 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 Aged and Disabled 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 the areas of bathing, grooming, dressing, and continence.

- 5) The Claimant and her representatives contend that additional deficits should be awarded in the areas of eating, orientation, medication administration, and vacating during an emergency.

**Eating-** The Claimant testified that she has problems with her stomach and can only ingest soft meats. She stated that her granddaughter usually cuts up her meats but prepares her food in a way to assist her in eating. The assessing nurse testified that during the PAS assessment the Claimant did not indicate any problems using a knife, fork or spoon, also the Claimant did not indicate any problems with her hands or fingers during the assessment. The assessing nurse documented in the PAS assessment that the Claimant had not required any assistance in the week prior to the assessment.

The Claimant was assessed as a Level 1 Self/Prompting in the PAS assessment. The Claimant did not indicate to the assessing nurse any situational trouble with her hands or fingers during the assessment regarding her ability to eat. The Claimant did not relay any additional problems with using utensils for eating therefore a deficit **cannot** be awarded in the area of eating.

**Orientation-**The Claimant testified that she has experienced trouble remembering and at times experiences nervousness and anxiety. The Claimant’s representatives testified that the Claimant is an Alzheimer patient who was experiencing the initial effects of the disorder during the assessment. The assessing nurse testified that in order to qualify for a deficit in the area of orientation an individual must be totally disoriented to person, place and time. The assessing nurse documented in the assessment that the Claimant gets a newspaper everyday to track that day and date.

Testimony revealed that the Claimant has some spells of confusion and anxiety which limit her abilities to perform in certain life areas. At the assessment the Claimant was not disoriented to person, place or time therefore a deficit **cannot** be awarded in the area of orientation.

**Medication Administration**-The Claimant testified that she is unable to take her own medication and that her Homemaker gets her medicines for her. ----, Homemaker RN, testified that the Claimant experiences confusion with administering her own medications. She stated that the Claimant has on occasion ingested more than the prescribed dosage as her confusion has led her to take medications out of her pill dispenser as well as the prescription bottles and that the Claimant could not mentally “get the right pill at the right time”. The assessing nurse testified that in order for a deficit to be awarded in the area of medication administration an individual must not exhibit the physical capability to consume their own medication. The nurse stated that an individual’s disability or incapacity must prevent them from administering their own medication and a deficit is not awarded if the individual must be monitored during the process. The nurse documented that the Claimant could take her own medication and that the Homemaker places them in the appropriate divider.

The Claimant’s condition does require consistent supervision and monitoring on behalf of the Homemaker and testimony revealed that the Claimant has some confusion which requires the Homemaker to assist the Claimant by placing her medications in a pill dispenser. The Claimant does not lack the ability to ingest her own medication therefore a deficit **cannot** be awarded in the area of medication administration.

**Vacating**-The Claimant testified that she does not leave her home during the daytime without assistance and would be unable to vacate during an emergency without assistance from other individuals. She indicated that she experiences periodic confusion and anxiety and this can contribute to her inability to vacate her home. The Claimant testified that she uses the assistance of a walker while in her home. The Claimant’s Homemaker stated that the Claimant had fallen in September but did not injure herself to the point in which she had to be transported to the hospital. The Claimant’s representatives testified that the nurse’s observations of the Claimant were conducted in a calm environment and if the Claimant was confronted with an emergency situation her mental condition would not allow her to vacate in a safe manner. The assessing nurse testified that she observed the Claimant ambulate during the assessment and that she had a slight limp and used a chair to aide herself. The assessing nurse testified that there were other individuals present during the assessment and that the Claimant did not require assistance to ambulate and the assessing nurse noted that the Claimant has a handicap accessible apartment to assist her in case of an emergency.

Testimony indicated that the Claimant, at the time of PAS assessment, was experiencing the initial stages of Alzheimer’s disease and the condition has been progressively worse since the assessment. Further testimony from the Claimant’s representatives indicated that the Claimant experiences confusion and anxiety in her daily routine. According to the PAS assessment, Exhibit D-2, the information regarding the confusion and anxiety was not relayed to the assessing nurse. Furthermore, the Claimant was afforded the opportunity to provide additional information regarding contested areas of deficits in a two week timeframe from the date of the Notice of Potential Denial, Exhibit D-3. The Claimant’s representatives did submit Exhibit D-4, Additional information from [REDACTED] M.D. which indicated that the Claimant would be “unlikely to vacate” in the event of an emergency. The documentation provided was vague in nature and did not indicate any periods of the confusion or anxiety in which the Claimant experiences in her daily functions. The Claimant informed the assessing nurse that she could evacuate her home if needed and the assessing nurse observed the Claimant ambulate without the use of an assistive device. The assessing nurse acted on the information that was made

available to her at the time of the assessment and additional information from the Claimant's physician which did not indicate assistance in the area of vacating. The assessing nurse was correct in her assessment in the functional area of vacating; therefore a deficit **cannot** be awarded in the contested area.

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) tracheotomy, (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 health areas of bathing, grooming, dressing, continence.
- 3) Evidence presented during the hearing did not establish any additional deficits to the Claimant and her total number of deficits awarded remain at four (4).
- 4) The Claimant demonstrates four (4) qualifying deficits; therefore the Department was correct in its decision to terminate medical eligibility under the Aged and Disabled Waiver Program.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate the Claimants eligibility 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 February 2010.**

---

**Eric L. Phillips  
State Hearing Officer**