



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

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

January 28, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 27, 2010. Your hearing request was based on the Department of Health and Human Resources' termination of 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 meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

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

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI

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

-----,

Claimant,

v.

Action Number: 09-BOR-2135

**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 January 27, 2010 on a timely appeal filed October 27, 2009.

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

-----, Claimant's daughter and Claimant's representative

Kay Ikerd, Bureau of Senior Services, representing the Department
Teresa McCallister, RN, WVMI, Department witness

It should be noted that both the Claimant and the Department participated by conference call.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to deny benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/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 completed September 14, 2009
- D-3 Notice of Potential Denial dated September 17, 2009
- D-4 Notice of Denial dated October 2, 2009
- D-5 Letter from Claimant's physician dated December 9, 2009

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an initial medical evaluation for the Title XIX Aged and Disabled Waiver Program during the month of September 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse, Teresa McCallister, completed a medical assessment (D-2) on September 14, 2009 in the Claimant's home and determined that he does not meet the medical eligibility criteria for the program. The nurse testified that the Claimant received four (4) deficits on the Pre-Admission Screening (PAS) assessment (D-2) in the areas of bathing grooming, dressing, and vacating a building in the event of an emergency.
- 3) The Department sent the Claimant's listed physician, Dr. [REDACTED] a Notice of Potential Denial (D-3) on September 17, 2009. The form explained that if the Claimant believed he had additional information regarding his medical condition that was not considered, it should be submitted within the next two weeks to WVMI. The Department acknowledged receiving a letter (D-5) from the Claimant's medical provider on December 9, 2009; however, they determined that it was submitted too late for consideration and therefore disregarded its contents.
- 4) The Department sent the Claimant a Notice of Denial (D-4) dated October 2, 2009. The notice was addressed to -----, and mailed to the Claimant at -----, -----.

- 5) The Claimant contends that additional deficits should be awarded in the areas of bowel incontinence and eating; therefore each area will be addressed individually.
- 6) ***Eating*** is addressed within the area of the PAS listed as Functional Abilities, which includes instructions to indicate the individual's functional ability in the home for each item listed therein. The WVMI nurse rated the Claimant as "self/prompting" meaning he is capable of performing this activity alone or with prompting. The nurse recorded the following on the PAS:

Dgtr [sic] is assisting the applicant with ADL (activities of daily living), meals, appts. App reports he feeds himself, denies need for assistance with cutting meats, slicing or peeling foods, despite his hand tremors. App signed consent form with tremulous hand and dated accurately without prompting.

Other information documented on the PAS assessment includes that the Claimant has severe shortness of breath and is prescribed continuous oxygen as a result. He also is listed as becoming weak and severely short of breath with activity. The nurse also documented that it takes approximately one (1) hour for him to be dressed and he has to rest during the process even though his daughter dresses him. Also, the PAS shows that he can raise his arms but cannot hold them up due to the shortness of breath. The Claimant testified that he did not want the nurse to think he was helpless, and that is why he told her that he could feed himself during the assessment. He testified that his daughter cuts up his food and on occasion she must feed him. His daughter, -----, corroborated his testimony and stated she did not want to embarrass her father by correcting him during the assessment. The Claimant's medical provider, Pam Price, (D-5) indicated in her letter dated December 9, 2009 that the Claimant was noted in his last exam to have increased use of accessory muscles to breathe, and that he uses nearly every calorie he gets to breathe. She adds that he has had multiple hospitalizations for acute exacerbation of COPD in the past year.

- 7) ***Incontinence of Bowel*** is also addressed within the area of the PAS listed as Functional Abilities. The WVMI nurse rated the Claimant as occasionally incontinent meaning less than three times per week, and listed him at Level Two (2) in this area which does not constitute a deficit. The nurse recorded the following pertinent information on the PAS:

App reports that he has no urinary leakage; he reports that his colostomy leaks occasionally "not very often" [sic], reporting that "it has happened one or two times"[sic].

In the area marked "RECENT HOSPITALIZATIONS" the WVMI nurse recorded that the Claimant's colon erupted and had 90% removed and he has a hole in his small intestine. Under "RECENT SURGERIES" the nurse documented that he reports having a colostomy performed in 2008 and small bowel repair in 2008. The Claimant argued that this should be considered a deficit because someone must attend to the colostomy bag for him as he is unable to do this for himself. The Claimant's daughter also testified that sometimes the bag leaks and must be cleaned.

8) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1) – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

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.

9) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 states in pertinent part:

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 ADW 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.

10) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.3.2 (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 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.

- 11) Aged/Disabled Home and Community Based Waiver Policy Manual, Attachment 14, The Pre-Admission Screening Tool indicates that an individual who has undergone a colostomy is considered at Level Four (4) in the area of Continence of Bowel.

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.
- 2) Policy also stipulates that in the event the Department finds the Claimant to be ineligible at the time of reevaluation, they must send the member (Claimant), the referring physician, and the member's representative, if applicable, a Potential Denial letter, which includes the reason for the potential denial, listing the areas in which deficiencies were found and notice that the medical eligibility standard has not been met. The letter also is to include a copy of the PAS and ADW policy. The member (Claimant) is to be given two weeks to submit supplemental medical information to be considered.
- 3) The Department properly notified the Claimant by sending a Potential Denial Notice (D-3) on September 17, 2009. The Claimant failed to provide the Department with additional information during the two week timeframe awarded him in the Potential Denial Notice (D-3).
- 4) The letter from the Claimant's medical provider submitted December 9, 2009 for consideration is found to be relevant to the Claimant's medical condition; however, the fact that it was not submitted during the consideration period must be taken into consideration and therefore this document is given little weight.
- 5) In the functional area of eating, the testimony from both the Claimant and his daughter is found to be credible. Although their testimony during the hearing supported that the Claimant needs physical assistance with this function, they admitted that they supplied the WVMI nurse with information during the assessment which supported that he needed no physical assistance in this area. It is clear the Department came to the correct conclusion in this area based on the information available to it at the time.
- 6) In the functional area of bowel incontinence, policy provides that an individual with a colostomy is to be considered at Level Four (4) for this program; therefore, the Department's determination that he is Level Two (2) in this area is not correct. The Claimant clearly reported during the assessment that he has had this procedure performed, and much discussion was had on the subject during the evaluation. The Claimant is therefore eligible for an additional one (1) deficit in this area.

- 7) The Claimant received four (4) deficits in September 2009 in conjunction with his Aged/Disabled Waiver Program initial evaluation in the areas of bathing, dressing, grooming and vacating a building in the event of an emergency. When the additional one (1) deficit for bowel incontinence is added to the original determination, the Claimant now has a total of five (5) deficits.
- 8) The required five (5) deficits have 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 **reverse** the Agency's proposal to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program based on its finding that the Claimant did not have bowel incontinence. The additional one (1) deficit awarded for bowel incontinence is to also be considered by the Department when determining level of care for this Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of January, 2010.

**Cheryl Henson
State Hearing Officer**