



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

Joe Manchin III
Governor

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

May 14, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 19, 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 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 deny 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]

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

-----,
Claimant,

v.

Action Number: 09-BOR-2137

**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 May 14, 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 19, 2010 on a timely appeal filed October 26, 2009.

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

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

[REDACTED] Claimant's e and witness

Kay Ikerd, RN, WV Bureau of Senior Services

Teena Testa, RN, West Virginia Medical Institute, Department's witness

All parties participated by conference call.

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

The Hearings Officer placed all parties 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 benefits under the Aged and Disabled Waiver Services (ADW) Program.

V. APPLICABLE POLICY:

Aged and Disabled Waiver Services Program Manual Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Program Manual Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed September 24, 2009
- D-3 Notice of Potential Denial dated September 28, 2009

Claimant's Exhibit:

- C-1 Material faxed from [REDACTED] on January 4, 2010 and labeled "Info re: appeal for [REDACTED] on 1/19/10"

VII. FINDINGS OF FACT:

- 1) 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: (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.

- 2) Department's witness completed a yearly PAS evaluation for the Aged and Disabled Waiver Services Program (Exhibit D-2) on September 24, 2009 in the Claimant's home and determined that he did not meet the medical eligibility criteria for the program. The nurse testified that the Claimant received four (4) deficits on the PAS assessment in the areas of bathing, grooming, dressing and continence.
- 3) The Department sent the Claimant's Case Management Agency, [REDACTED] a Notice of Potential Denial (Exhibit D-3) on September 28, 2009. The form explained that if the Claimant or his representatives believed there was additional information regarding her medical condition that was not considered, it should be submitted within the next two weeks to WVMI.
- 4) Claimant's home health care agency faxed additional information to the Department on October 2, 2009. This information was in the form of a handwritten note from Claimant's primary physician, [REDACTED] MD of [REDACTED] WV, which stated as follows:

This is to certify that [Claimant] has difficulty ambulating due to distal neuropathy and osteoarthritis, COPD. He definitely needs assistance in case of emergency.
- 5) The Department sent the Claimant a Notice of Denial dated October 19, 2009. The notice was addressed to and mailed to Claimant at -----, -----.
- 6) The Claimant's representative contended during the hearing that one additional deficit should be awarded in the areas of vacating a building.
- 7) ***Vacating a building*** is an area of the PAS wherein an applicant may be assessed with a deficit. The PAS instructs the reviewer to assess an applicant's ability to vacate his or her residence in the event of an emergency. The WVMI nurse rated the Claimant as "with supervision" and awarded Claimant no deficit. The nurse recorded the following pertinent information on the PAS:

In the event of an emergency client states he feels he could get out of the home himself and he would not need any supervision. I ask[ed] the client and his wife three times if the client would be able to get out of the home and they both agreed he could. Wife ask[ed] if I wanted to see the rooms and the exits he could take.

Claimant's representative responded that it was her experience in the home health care industry that clients in the process of completing a PAS tend to respond to the vacating question that they are able to vacate during an emergency. But if reminded of their health problems and if reminded that an emergency situation may be occurring, most clients would then answer that they could not. Department's witness stated that she asked Claimant and his spouse three times if they could get out during an emergency, and they both stated they could. Department's witness stated that Claimant's wife indicated Claimant's emergency evacuation route. Department's witness also testified that Claimant stood up without assistance and walked the length of his porch and back with the aid of his walker, and as he did so she noted that his gait was steady.

- 8) Claimant's representative submitted into evidence a packet of information to support Claimant's position that additional deficits should be awarded. (Exhibit C-1.) One item from this packet was a letter from Claimant's representative to the Hearings Officer dated December 30, 2009, one was office visit notes from Claimant's appointment with a pulmonary specialist, [REDACTED] MD, dated December 14, 2009, and one was a second copy of the previously-mentioned written statement from Claimant's primary-care physician. These items were faxed to the Hearings Officer on January 4, 2010, so they were not available to WVMi within two weeks of the September 24, 2009 PAS. Therefore the only substantial evidence from this submission is the written statement from Claimant's primary care physician.

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) The Department properly notified the Claimant by sending a Potential Denial Notice to Claimant's Case Management Agency on September 28, 2009. The Case Management Agency provided the Department with additional medical information within the two-week timeframe afforded to Claimant in the Potential Denial Notice.
- 3) The Department was correct in not giving Claimant a deficit in the area of vacating a building. Department's witness based her decision on her observations as to Claimant's ability to ambulate at the time of the PAS and on statements by Claimant and his spouse that he could vacate. Claimant's spouse indicated to Department's witness what was the exit route for Claimant in their home. When Department's witness reviewed the PAS with Claimant and his spouse, neither of them questioned this finding on the assessment. Also, Claimant's primary care physician stated that Claimant needed assistance in vacating, but did not say that Claimant could not vacate. No direct testimony was offered that indicated Claimant could not vacate.
- 4) Claimant received four (4) deficits in September 2009 in conjunction with his Aged/Disabled Waiver Program medical eligibility review in the areas of bathing, dressing, grooming and continence. Neither Claimant nor his representative was 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 and Disabled Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of May, 2010.

**Stephen M. Baisden
State Hearing Officer**