



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Joe Manchin III
Governor

Board of Review
P.O. Box 1736
Romney, WV 26757

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

January 29, 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' decision to deny your Medicaid Eligibility under the 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 and Disabled Waiver Program is based on current policy and regulations. These regulations provide that the 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 chose the waiver program as a means to remain in their home where services can be provided [Aged/Disabled (HCB) Services Manual Section 501]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver Program.

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

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your application for the Aged and Disabled Waiver Program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Kay Ikerd, RN, BoSS

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

-----,

Claimant,

v.

Action Number: 09-BOR-2180

**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 January 29, 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 November 1, 2009.

II. PROGRAM PURPOSE:

The Program entitled the Aged and Disabled Waiver program is administered by the West Virginia Department of Health & Human Resources. 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 Representative and Sister
Kay Ikerd, RN, BoSS
Debra Lemasters, RN, WVMI

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 denial of the claimant's application for 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 Form dated September 22, 2009
- D-3 Notice of Potential Denial dated September 28, 2009
- D-4 Additional Information from [REDACTED] M.D. dated October 5, 2009
- D-5 Additional Information from [REDACTED] M.D. dated October 7, 2009
- D-6 Notice of Denial dated October 15, 2009

VII. FINDINGS OF FACT:

- 1) On September 22, 2009, the West Virginia Medical Institute (WVMI) medically assessed the Claimant for her eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, Pre-Admission Screening Form (PAS).
- 2) On September 28, 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.

Based on your PAS you have deficiencies in only 2 areas. Bathing and Grooming.

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

- 3) On October 5, 2009, Exhibit D-4, Additional Information from Ray S. Greco M.D., was submitted for nurse review. This exhibit documents in pertinent part:

Please re assess [sic] her status.

1. Definitely has impaired judgement
2. Definitely verbal abusive to caretaker
3. Rehabilitative potential-poor

Food has to be placed in front of her. Can go entire day without eating.

Confused as to time-place. Knows name.

Permanently disabled. Requires 24 hours day 7 day week care.

- 4) On October 7, 2009, Exhibit D-5, Additional Information from Richard Ajayi, M.D. was submitted for nurse review. This exhibit documents:

----- is currently under my care and has been diagnosed with Organic brain syndrome and also has behavior issues.

- 5) The Claimant was notified on October 15, 2009, via Exhibit D-6, 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 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 you 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 and grooming.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 6) Debra Lemasters, WVMH assessing nurse, testified that after an additional review of the PAS assessment an additional deficit was awarded in the area of medication administration. Ms. Lemasters stated that a deficit can be awarded in the health area due to the impaired mental status of the Claimant and the fact that the Claimant's sister prepares the medications and places the medications in the Claimant's hand. Total deficits awarded to the Claimant are three-bathing, grooming, and medication administration.
- 7) -----, the Claimant's representative and sister, was present during the assessment and supplied the information to the assessing nurse. -----stated the Claimant's has a limited mental capacity and if she is asked a question she will agree with you and moments later be unaware of the

initial question. -----contends that additional deficits should have been awarded in the areas of continence, transferring, dressing, orientation, and vacating in an emergency.

Continence- -----, the Claimant's representative and sister, testified that the Claimant has occasional urinary accidents but does not have any indications of bowel incontinence. During the assessment the Claimant and her representative denied any bowel or bladder incontinence or use of any incontinence supplies. The assessing nurse testified that she did not receive any diagnosis of incontinence from the Claimant's physician and could not concede a deficit in the contested area.

An individual must have episodes of bladder or bowel incontinence greater than three to five times a week. The individuals present that the assessment denied any incontinence or the use of any incontinence supplies. The assessing nurse was not informed of any diagnosis of incontinence; therefore a deficit **cannot** be awarded in the contested area.

Transferring-----testified that on the day of the assessment she had to physically assist the Claimant to transfer from her seated position. Additionally, she testified that the Claimant can transfer out of seated position if "she pushes on something". The assessing nurse testified that during the assessment she observed the Claimant transfer off of her couch without any difficulty. The assessing nurse was informed by the Claimant's sister that the Claimant transfers with the use of furniture for support. The Claimant was evaluated as a Level II requiring an assistive device.

A deficit is awarded in the area of transferring when an individual requires "hands on" physical assistance to transfer. The individuals present at the assessment informed the nurse that the Claimant transfers independently and the assessing nurse observed the Claimant transferring without difficulty during the evaluation. The Claimant does not require "hands on" physical assistance; therefore a deficit **cannot** be awarded in the area of transferring.

Dressing-----testified that the Claimant can fasten her undergarments such as a bra, but requires physically assistance to manipulate her arms through openings in her clothing. ----- testified that she puts the Claimant's arms up and pulls clothing over her. The assessing nurse testified that in order to qualify for a deficit in the area of dressing an individual must require "hands on" physical assistance. Ms. Lemasters purported that the Claimant demonstrated the ability to lift her arms, grasp hands, and follow direction. She indicated that the Claimant requires prompting in the area of dressing as the Claimant at times may dress herself incorrectly by putting her shirt on backwards.

In order to qualify for a deficit in the area of dressing, an individual must require "hands on" physical assistance and lack the ability and mobility to adequately dress. The Claimant does require supervision and at times may require assistance but evidence and testimony did not reveal consistent "hands on" assistance from the Claimant's caretaker and a deficit in the area of dressing **cannot** be awarded.

Orientation-----testified that the Claimant suffers from organic brain syndrome and has spells of schizophrenia. She stated that the Claimant agrees with individuals as she "doesn't know what is going on" and that she suffers from short term memory loss and is confused on a regular basis. Testimony from -----also indicated that the Claimant requires constant care twenty-four hours a day as there have been episodes in which the Claimant has tried to leave

her residence. Ms. Lemasters testified that the Claimant was alert and oriented on the day of the assessment. She indicated that during the assessment the Claimant was aware of her name, the fact that she was home, and the time of day (daytime). Ms. Lemasters 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. Ms. Lemasters testified that she reviewed the additional information submitted from [REDACTED] M.D. and that the Claimant was assessed by the physician as being disoriented to place and time but that the Claimant was aware of her name. Ms. Lemasters indicated that the Claimant was assessed as a Level II with intermittent disorientation as she suffers from periods of confusion and was aware of name, place and time during the assessment. Ms. Lemasters further testified that confusion can be corrected from direction from other individuals and that disorientation cannot be corrected as the individual that is disoriented cannot be convinced of any adjustments (i.e. informing an individual of their correct name).

In order to qualify for a deficit in the area of orientation, an individual must be totally disoriented to person, place, and time. According to the physician's documentation, the individual is confused to time and place but was aware of her name. During the assessment the nurse was advised of the Claimant's short term memory impairment and intermittent disorientation. The Claimant does not meet criteria in the contested area; therefore a deficit in the area of orientation **cannot** be awarded.

Vacating in an emergency-----indicated that the Claimant cannot be told to vacate her premises in the event of an emergency. -----stated that you must physically remove the Claimant from an emergency situation. -----testified that during the Claimant's residence in a geriatric nursing facility, a fire had erupted in the Claimant's bathroom. -----stated that the Claimant ran out of her room to inform staff of the emergency but ran back into her room where the fire was taking place. On a separate occasion, the Claimant had created a fire in her sister's kitchen in which the Claimant tried to extinguish the fire with a dish cloth. The Claimant's representative testified that her sister doesn't understand the impending dangers that may occur during an emergency situation. The assessing nurse testified that the Claimant does require supervision in vacating during an emergency situation. She indicated on the PAS assessment that the Claimant can follow directions and did so without any difficulty during the evaluation. The assessing nurse purported that the Claimant's intermittent disorientation and the Claimant's ability to ambulate without hindrance did not constitute a deficit in the contested area.

Testimony revealed that the Claimant suffers from an impaired mental state in which she does not recognize impending dangers. Previously, the Claimant has been faced with an emergency situation and on both occurrences the Claimant required assistance to remove herself from the situation. The Claimant can follow verbal commands and can adhere to directions but the Claimant's mental status would impair her ability to vacate if no other individuals were present. Based on available testimony, a deficit **can be** awarded in the area of vacating during an emergency situation.

8) 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.
- 9) 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.
- 10) 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 areas of bathing and grooming. Upon review of the PAS, the Department conceded an additional deficit in the area of medication administration.
- 3) Evidence presented during the hearing established an additional deficit in the area of vacating during an emergency. The total deficits awarded to the Claimant stand 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 action of the Department to deny the Claimant's application for benefits and services 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 January 2010.

**Eric L. Phillips
State Hearing Officer**