



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 25, 2010

-----, Esq. **For:** -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your client's hearing held February 25, 2010. Your client's hearing request was based on the Department of Health and Human Resources' termination of her 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 client's hearing reveals that she does 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 client's 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
Michael Bevers, Assistant Attorney General, WV Bureau of Medical Services
-----, RN, [REDACTED]

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

-----,

Claimant,

v.

Action Number: 09-BOR-2298

**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 25, 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 February 25, 2010 on a timely appeal filed November 30, 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

-----, Esq., Legal Aid of WV, Claimant's representative

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

-----, Claimant's home-maker and witness

Michael E. Bevers, Esq., WV Bureau of Medical Services, Department's representative

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

Kathy Gue, RN, West Virginia Medical Institute, Department's witness

This hearing was conducted at the WV Department of Health and Human Resources, [REDACTED] County [REDACTED] WV, and by conference telephone 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 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 benefits under 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 Medical Necessity Evaluation Request, dated July 30, 2009
- D-3 Pre-Admission Screening (PAS) assessment completed November 19, 2009
- D-4 Notice of Decision to Terminate ADW benefits dated November 19, 2009

Claimant's Exhibits:

- C-1 Treatment Record from Claimant's Physician dated October 14, 2009
- C-2 WV Medicaid ADW Program Plan of Care dated January 2, 2010
- C-3 WV Medicaid ADW Program Plan of Care dated February 16, 2010
- C-4 WV Medicaid ADW Program Plan of Care dated February 16, 2010
- C-5 42 US Code § 1396r Requirements for Nursing Facilities
- C-6 Aged/Disabled Home and Community-Based Services Manual Section 501

VII. FINDINGS OF FACT:

- 1) The Claimant underwent a yearly medical evaluation review for the Title XIX Aged and Disabled Waiver Program during the months of July through November 2009.
- 2) 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.

- 3) Department's witness testified that her agency received a Medical Necessity Evaluation Request on July 30, 2009, from Claimant's primary care physician. (Exhibit D-2.) Based on this request, she scheduled a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant, conducted the PAS (Exhibit D-2) on October 20, 2009 in the Claimant's home and completed it on November 19, 2009. She determined that Claimant did not meet the medical eligibility criteria for the Program. Department's witness testified that Claimant received three (3) deficits on the PAS assessment in the areas of bathing, dressing and continence.
- 4) The Department sent the Claimant a Notice of Denial (Exhibit D-4) dated November 19, 2009. The notice was addressed to Claimant and mailed to -----.
- 5) The Claimant and her representative contended during the hearing that additional deficits should be awarded in the areas of grooming and vacating her home in the event of an emergency.
- 6) **Grooming** is addressed within the area of the PAS listed as Functional Abilities (Item #26), which includes instructions to "indicate the individual's functional ability in the home for each item listed therein." The WVMi nurse rated the Claimant at a Level 1, "self/prompting" meaning she is capable of performing this activity alone but may need occasional prompting. The nurse recorded the following on the PAS:

----- needing help washing her hair in the shower. She can comb her hair. C/O arms hurting when combing her hair. She cleans her dentures. She clips her fingernails and toenails.

Claimant's homemaker and witness testified that she completes a Homemaker Work Sheet daily as part of her employment with [REDACTED]. This work sheet asks the employee to indicate by initialing when completed a list of activities that Claimant needs help performing or cannot perform. (Exhibits C-3 and C-4.) These work sheets indicate that Claimant's homemaker assist with her hair and mouth care. Claimant's homemaker and witness testified that she brushes the hair on the back part of Claimant's head. She testified that she brushes Claimant's dentures but Claimant inserts and removes her own dentures. Claimant testified that on weekends when her homemaker does not work, she can brush the back of her hair by bending forward and brushing. Claimant testified that on weekends she treats her dentures with tablet cleansers.

- 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. Department's witness recorded the following pertinent information on the PAS:

In the event of an emergency [Claimant] says that she would be able to vacate the home with her cane.

Claimant testified that she thinks if an emergency situation would occur while she were in the front portion of her mobile home, she would be able to vacate with the help of her cane. However, if she were in her bedroom in the back of her mobile home when an emergency occurred, she could not vacate because there are no steps at the back door of her home and the back door is some distance from the ground.

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 of her termination from the Aged and Disabled Waiver Program by sending a Denial Notice to Claimant on August 7, 2009. The Denial Notice indicates Claimant received deficits in the areas of bathing, dressing and continence.
- 3) The Department was correct in not giving Claimant a deficit in the functional area of grooming. Claimant indicated during the PAS that she could take care of her hair, dentures and nails. Claimant testified she could brush her hair when her homemaker was not available. She also testified that she could clean her dentures with tablet products when her homemaker was not available.
- 4) The Department was correct in not awarding Claimant a deficit in the area of vacating her home during an emergency. Department's witness reported on the PAS that Claimant stated she would be able to vacate her home with the assistance of a cane in the event of an emergency. Claimant testified during the hearing that she could vacate from the front of her home during an emergency but if she were in the back of her home, she could not get out of her back door because there are no steps. However, the purpose of the PAS is to assess the Claimant's functional abilities and not the safety factors related to her home. Evidence shows that Claimant is physically able to vacate a building.

- 5) Claimant received three (3) deficits in November 2009 in conjunction with her Aged/Disabled Waiver Program medical eligibility review in the areas of bathing, dressing and continence. Neither Claimant nor her representatives were able to offer substantive evidence that would result in Claimant receiving more deficits than these.
- 6) 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 25th Day of May, 2010.

**Stephen M. Baisden
State Hearing Officer**