



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

June 25, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 8, 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
-----, RN, [REDACTED]

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

-----,

Claimant,

v.

Action Number: 09-BOR-2350

**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 June 8, 2010 on a timely appeal filed December 8, 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

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

-----, Claimant's caregiver and witness

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

Michelle Wiley, RN, West Virginia Medical Institute, Department's witness

Representative and witness for the Department participated by telephone conference call.

Presiding at the hearing was Stephen M. Baisden, State Hearings 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 Pre-Admission Screening (PAS) assessment completed October 22, 2009
- D-3 Notice of Potential Denial dated November 4, 2009
- D-4 Notice of Denial dated November 20, 2009

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 September through December, 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 completed a PAS (Exhibit D-2) on October 2, 2009 in the Claimant's home and determined that she did not meet the medical eligibility criteria for the Program. She testified that the Claimant received three (3) deficits on the PAS assessment in the areas of bathing, grooming and dressing.
- 4) The Department sent the Claimant's physician, [REDACTED] MD, of [REDACTED] WV, a Notice of Potential Denial (Exhibit D-3) on November 4, 2009. The letter explained that if the Claimant or her representatives believed there was additional information regarding her medical condition that was not considered, it should be submitted within the next two weeks to WVM. Neither Claimant nor her physician submitted further medical information during that time span.
- 5) The Department sent the Claimant a Notice of Denial (Exhibit D-4) dated November 20, 2009. The notice was addressed to Claimant and mailed to -----, [REDACTED]
- 6) The Claimant and her representative contended during the hearing that additional deficits should be awarded in the areas of vacating a building during an emergency, transferring and walking.
- 7) Claimant's representative testified that Claimant suffers from an undiagnosed medical condition which causes Claimant to have periods, variously referred to as "episodes" or "spells" by Claimant, wherein she loses control of her muscles, becomes completely limp and is unable to respond to voices. Claimant does not become unconscious during these episodes, and she states that during an episode, she can hear everything that is said to her and in her presence. Claimant's representative stated that an episode may last from a few minutes to three hours, and stress seems to exacerbate their frequency and severity. On Claimant's referral to the Aged and Disabled Waiver Program, signed by her primary care physician and dated August 27, 2009, her physician has written on the item labeled "Patient's Diagnosis" that Claimant has a diagnosis of ". . . narcolepsy [and] non-epileptic spells (Cataplexy?)" Department's representative recorded the following on the PAS at item #23, Medical Conditions/Symptoms:

[Claimant] has a diagnosis of non-epileptic spells (cataplexy) on the referral. Says she has had this since 2001. She says that she can hear things when these episodes occur, but she cannot do anything else. Says that it is like she has no energy to even breathe . . . Says that she has 3-4 episodes weekly.

- 8) ***Vacating a building during an emergency*** 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 WVM nurse rated the Claimant as "with supervision" and awarded Claimant no deficit. Department's witness recorded the following pertinent information on the PAS:

[Claimant] says that if there was an emergency in the home, she does

not know if she could vacate. Says, "I don't know if it would cause me to have a spell." Based on her ability in the home today and her medical diagnoses, was assessed as requiring supervision with vacating.

- 9) **Transferring** is addressed within the area of the PAS listed as Item #26, 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 at a Level 2, "Supervised/Assistive Device," and did not award a deficit. The nurse recorded the following pertinent information on the PAS:

During the visit, [Claimant] stood up from the couch [by] pushing off of it. She had no difficulty with standing at this time. She then placed [a] small blanket back up on the back of her couch because it was falling down. She sat back down. During the visit she stood up from the couch again to obtain her medication. Stood in the same manner.

- 10) **Walking** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMI nurse rated the Claimant at a Level 2, "Supervised/Assistive Device," and did not award a deficit. The nurse recorded the following pertinent information on the PAS:

[Claimant] denies having a cane/walker. Had already observed her walking during the visit . . . She walked through the home, she held to thing when she walked at this time. Gait was mild, slow and unsteady. She returned to couch holding to things at times. Says that she has complications when she walks because of [her] fibromyalgia and arthritis.

- 11) Claimant's representative testified that Claimant does have problems with vacating, transferring and walking. Claimant testified that she had no problem with the October 22 PAS, but she felt that the evaluation process should be more open to consider medical information from a greater period of time before and after the PAS is conducted.
- 12) Claimant's witness, her primary care giver and daughter, testified that she has often gone into Claimant's home to find her having one of her episodes, lying helplessly on the floor of her home.

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 physician on November 4, 2009. No additional information was provided during the two-week timeframe awarded Claimant in the Potential Denial Notice. (Exhibit D-3).
- 3) The Department was correct in not awarding Claimant a deficit in the functional area of transferring. Department's witness based her decision on her observations of Claimant's abilities made during the time the PAS was conducted. According to the PAS, Claimant stood up and sat down without assistance at least twice during the time the evaluation

took place. Neither Claimant nor her representative offered any relevant testimony to support their assertion that a deficit should have been awarded in this area.

- 4) The Department was correct in not awarding Claimant a deficit in the area of walking. Department's witness reported on the PAS that Claimant walked through her apartment without the assistance of another individual, although she did support herself on the walls and furnishings in her home. Neither Claimant nor her representative offered any relevant testimony to support their assertion that a deficit should have been awarded for dressing.
- 5) The Department was not correct in not awarding Claimant a deficit in the area of vacating a building in the event of an emergency. Department's witness was aware of Claimant's diagnosis of cataplexy, and Claimant stated on the PAS that she was not sure if she could get out of her home during an emergency if she were having one of her cataplexic episodes. Claimant's representative testified that stress is a contributing factor in these episodes, and it is reasonable to assume that an emergency severe enough to warrant evacuation of one's home would be a stressful event.
- 6) Claimant received three (3) deficits in November 2009 in conjunction with her Aged/Disabled Waiver Program medical eligibility review in the areas of bathing, grooming and dressing. An additional deficit should be awarded for vacating a building in the event of an emergency. Neither Claimant nor her representatives were able to offer relevant evidence that would result in Claimant receiving more deficits than these.
- 7) 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 June, 2010.

**Stephen M. Baisden
State Hearing Officer**