



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 22, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 1, 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

-----,

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

-----,

Claimant,

v.

Action Number: 09-BOR-2354

**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 April 1, 2010 on a timely appeal filed December 11, 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

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

Kay Ikerd, RN, WV Bureau of Senior Services

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

All parties participated by telephone 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 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 November 11, 2009
- D-3 Notice of Potential Denial dated November 16, 2009
- D-4 Notice of Denial dated December 1, 2009

Claimant's Exhibits:

- D-1 Letter from [REDACTED] M.D., dated March 17, 2010

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 November 11, 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 vacating a building in the event of an emergency, eating and grooming.
- 4) The Department sent the Claimant's case management agency, [REDACTED] a Notice of Potential Denial (Exhibit D-3) on November 16, 2009. The form 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 WVMI. Neither Claimant nor her Physician submitted further medical information.
- 5) The Department sent the Claimant a Notice of Denial (Exhibit D-4) dated December 1, 2009. The notice was addressed to Claimant and mailed to P.O. Box 234, -----.
- 6) The Claimant and her representative contended during the hearing that additional deficits should be awarded in the areas of bathing and dressing.
- 7) **Bathing** 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 by herself, but someone may need to prompt her to do so. The nurse reviewer recorded the following on the PAS:

[Claimant] showers on a shower chair. She denies needing help getting washed or getting in and out of the shower.
- 8) **Dressing** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMI nurse rated the Claimant at a Level 1, "Self/Prompting". The nurse recorded the following pertinent information on the PAS:

[Claimant] denies needing help with dressing, such as putting on shirts, pants, shoes and socks.

- 9) Claimant's representative submitted into evidence a statement written by Claimant's physician, [REDACTED] M.D., and dated and dated March 17, 2010. This statement reads as follows:

This letter is regarding the health and limitations currently affecting my patient, [Claimant]. [Claimant] is currently experiencing significant arthritis that impairs her ability to perform certain daily functions, such as bathing and dressing without assistance. [Claimant] has decreased functionality of her hands when in pain and would require her to be assisted by another person be it her family or homemaker.

I am writing as [Claimant's] primary care physician and requesting that [Claimant] be strongly considered for approval for the Aged and Disabled Waiver Program. The homemaker services are vital to [Claimant] continuing to function in her home.

- 10) Department's representative testified that the statement from Claimant's physician is dated March 17, 2010. In order for medical information to be considered for an ADW Program denial, it must be submitted within two weeks of the date on the PAS. She further testified that this statement too general in nature to offer substantive medical reasons for awarding additional deficits.
- 11) Claimant's representative testified that Claimant was having a good day on the day the PAS was completed, and she did not understand the questions that were being asked of her. She stated that Claimant does have problems with bathing and dressing. Claimant testified that shortly before the hearing took place, she had fallen and broken her hip. Claimant added that she is now in a wheelchair. Neither Claimant nor her representative offered substantial medical evidence to refute the PAS that was completed on November 11, 2009.

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 November 16, 2009. No additional information was provided during the two-week timeframe awarded Claimant in the Potential Denial Notice which was sent to her physician on the same date. (Exhibit D-3).
- 3) The Department was correct in not giving Claimant a deficit in the functional area of bathing. Department's witness based her decision on Claimant's statements made during the time the PAS was conducted. According to the PAS, Claimant denied needing assistance in this area, and her physician offered no substantive medical documentation to justify awarding a deficit. Neither Claimant nor her representative offered any substantial 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 dressing. Department's witness reported on the PAS that Claimant denied needing assistance in this area, and her physician offered no substantive medical documentation to justify awarding

a deficit. Neither Claimant nor her representative offered any substantial testimony to support their assertion that a deficit should have been awarded for dressing.

- 5) Claimant received three (3) deficits in November 2009 in conjunction with her Aged/Disabled Waiver Program medical eligibility review in the areas of vacating a building in an emergency, eating and grooming. 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 22th Day of June, 2010.

**Stephen M. Baisden
State Hearing Officer**