



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

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

May 7, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 6, 2010. Your hearing request was based on the Department of Health and Human Resources' termination of Medicaid Aged and Disabled Waiver (ADW) Program services based on a finding of medical ineligibility.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2).

The information submitted at your hearing revealed that the Department was correct in its assessment of three deficits and medical ineligibility for the ADW program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate benefits under the ADW Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, Department Representative
Connie Sankoff, West Virginia Medical Institute

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

-----,

Claimant,

v.

Action Number: 10-BOR-560

**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 7, 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 May 6, 2010, on a timely appeal, filed January 4, 2010.

All persons offering testimony were placed under oath.

It should be noted that benefits have been continued through the hearing process.

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

-----, Claimant's witness

-----, Claimant's witness

Connie Sankoff, RN, West Virginia Medical Institute

Kay Ikerd, RN, Bureau of Senior Services

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its decision to terminate Aged and Disabled Waiver Program services to the Claimant based on a finding of medical ineligibility.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3 – 501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3 – 501.3.2

D-2 Pre-Admission Screening (PAS) form, dated November 30, 2009

D-3 Notice of potential denial, dated December 1, 2009

D-4 Notice of denial, dated December 16, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant is a 36-year-old male recipient of Aged and Disabled Waiver (ADW) Services. Connie Sankoff, a registered nurse with the West Virginia Medical Institute (WVMI), completed a pre-admission screening (PAS) assessment of the Claimant on November 30, 2009 (Exhibit D-2) to reevaluate medical eligibility for the program. The Department issued a potential denial notice (Exhibit D-3) on December 1, 2009, and a denial notice (Exhibit D-4) on December 16, 2009. Both notices indicated that only three deficits were awarded, and that a minimum of five deficits are required for medical eligibility.

- 2) Kay Ikerd, representative for the Department’s Bureau of Senior Services, testified that the applicable policy for this proposed Department action is from the Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services. At §501.3.2, this policy (Exhibit D-1) states, as follows:

501.3.2 MEDICAL CRITERIA

An individual must have five (5) deficits on the Pre-Admission Screening Form (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.

Section	Description of Deficits	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for 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) Ms. Sankoff identified the three areas in which deficits were awarded from the June 23, 2009, PAS: *bathing, dressing, and grooming*.
- 4) The Claimant and his witnesses testified that they dispute the Department's PAS assessment findings in the following two areas: *eating, and vacating the building in the event of an emergency*.
- 5) ----, the Claimant's Case Manager, testified that the Claimant is unable to vacate his residence in the event of an emergency, because of his blindness. She testified that if his residence filled with smoke, the Claimant would not be able to vacate. She testified that the Claimant stubs his feet and knees from maneuvering around his home. The Claimant agreed that he is unable to vacate his home in the event of an emergency, and testified that he recently stubbed his toe badly from trying to move around his residence. Ms. Sankoff testified that, at the time of her assessment of the Claimant, she witnessed him walking and using the doorframe, the wall, and furniture, for support. She testified that for this reason, she assessed the Claimant as able to vacate with supervision, and that for a deficit in this area he would either need to be mentally or physically unable to vacate the building.
- 6) Ms. [REDACTED] testified that the Claimant has problems cutting his food because of his blindness, and should have been awarded a deficit in the area of *eating*. She testified that the Claimant has a history of accidentally cutting himself while trying to cut up foods. Ms. Sankoff testified that when she assessed the Claimant in the area of *eating*, she witnessed him open containers, pick up and use utensils, and open a can with a can opener.
- 7) ----, the Claimant's caregiver, testified regarding the findings of a prior assessment. Ms. Ikerd objected to the testimony, explaining that each assessment is independent of prior findings and that the November 30, 2009, PAS is the basis of the Department decision under appeal; the testimony was disregarded for this reason.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for ADW Program services. The WVMI nurse determined, at the time of the PAS, that the Claimant had three qualifying deficits. Testimony on the Claimant's behalf proposed two additional deficits: *eating and vacating the building in the event of an emergency*. The WVMI nurse witnessed the Claimant opening cans and containers, and using utensils for eating. The WVMI nurse additionally witnessed the Claimant moving through his residence, with supports, indicating that he can vacate in the event of an emergency with prompting and supervision, as assessed. No additional deficits were revealed through testimony or evidence.

- 2) With only three deficits, medical eligibility could not be established, and the decision of the Department to terminate ADW services is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of May, 2010.

**Todd Thornton
State Hearing Officer**