



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26555

Joe Manchin III
Governor

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

April 5, 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' action to deny your application for benefits and services through the Medicaid 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 the hearing fails to demonstrate that you require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny your application for benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI

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

-----,

Claimant,

v.

Action Number: 10-BOR-656

**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 April 5, 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 April 1, 2010 on a timely appeal filed January 21, 2010.

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

Cecilia Brown, Quality Improvement Program Manager, Bureau of Senior Services (BoSS)

Kim Sang, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Thomas E. Arnett, 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 action to deny the Claimant's application for benefits and services through the Medicaid Aged and Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 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 October 19, 2009
- D-3 Pre-Admission Screening (PAS) assessment completed on December 16, 2009
- D-4 Notice of Potential Denial dated December 18, 2009
- D-5 Notice of Termination/Denial dated January 12, 2010
- D-6 Additional information submitted for review – Correspondence from Dr. [REDACTED] [REDACTED] M.D., Progress Notes from Dr. [REDACTED] Office, Back Scan (Lumbar and Thoracic Spine) completed on April 25, 1997 and correspondence from [REDACTED] [REDACTED] MPT.

VII. FINDINGS OF FACT:

- 1) On December 16, 2009, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Medicaid Aged & Disabled Waiver Services Program, hereinafter ADW Program {Exhibit D-3, Pre-Admission Screening (PAS) form}.
- 2) On or about December 18, 2009, the Claimant was notified of Potential Denial (Exhibit D-4). This notice states, in pertinent part:

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 Waiver, Policy and Procedures Manual, Chapter 501.3.2.

Based on your PAS you have deficiencies in only 3 areas – Vacating a Building, Grooming and Continence.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks. It should be noted that additional information (D-6) was received timely from the Claimant and reviewed by WVMH.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated January 12, 2010 (Exhibit D-5). 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 your homemaker and case management services. You have a 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 3 areas – Vacate a Building, Grooming and Continence.

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

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates three (3) program qualifying functional deficits but indicated the medical assessment completed in December 2009 fails to identify five (5) functional deficits as required by policy. As a result, medical eligibility for participation in the ADW Program could not be established.
- 5) The Claimant contends that she should have been found medically eligible as she is also demonstrating a functional deficit in the following areas, as indicated in Dr. [REDACTED] correspondence (D-6): Bathing, Transferring, Walking and Wheeling. It should be noted that the PAS assessment only considers the individual's functional ability in the home.

Wheeling – Testimony and documentation received at the hearing reveals that the Claimant does not use a wheelchair in her home. Because a wheelchair is not used in the home for mobility, a deficit cannot be established in this functional area.

Walking – Dr. [REDACTED] M.D. indicates in his January 4, 2009 correspondence that a deficit should have been awarded in walking, however, it is unclear if Dr. [REDACTED] is familiar with ADW Program eligibility requirements. In order to qualify for a functional deficit in walking, policy dictates that an individual must require one-person physical assistance to ambulate in their home. Testimony and documentation provided by the Kim Sang, RN, WVMI, indicates that the Claimant ambulates independently in her home with a walker. Documentation provided by [REDACTED] MPT, dated January 5, 2010 (D-6) further indicates the Claimant uses a standard walker for ambulation and the Claimant denied needing one-person physical assistance to ambulate in her home. Based on the evidence, the Claimant does not qualify for a functional deficit in walking.

Bathing – The Claimant testified that she has fallen in the shower before and prefers to have someone at her residence in case she falls. The Claimant testified, however, that no one provides her physical assistance when transferring in-and-out of the shower and that she does not require any assistance with washing - she only requires that someone be there should she fall. The Claimant’s testimony is consistent with the testimony and documentation provided by WVMI RN Sang. In order to qualify for a functional deficit in bathing, the individual must require (level 3) physical assistance or more. Based on the evidence, the Claimant does not qualify for a deficit in bathing.

Transferring – The Claimant was assessed at a level 2 (supervised/assistive device) by WVMI RN, Kim Sang as she documented in D-3 (page 6 of 7) “Witnessed applicant transfer out of chair in living room during assessment----states she is able to get in and out of her bed ok herself.” [REDACTED] MPT stated in her January 5, 2010 correspondence (D-6) “She is able to transfer from sit-to-stand, chair-to-bed, however, is much safer with contact guard assistance for safety reasons.” RN Sang testified (and documented in D-3, page 7 of 7) that she received verification from [REDACTED] that contact guard assist is when someone is standing by in case something happens. Based on the evidence, the Claimant was assessed correctly at a level 2 (supervised/assistive device) in transferring. Whereas the Claimant is not demonstrating the need for level 3 or higher assistance (one-person or two-person physical assistance in the home), a functional deficit cannot be awarded in transferring.

6) 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.

7) 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.

8) 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) tracheostomy, (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) Medicaid policy requires that an individual must demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded three (3) deficits on a PAS completed by WVMI in December 2009 – Vacate a Building, Grooming and continence.
- 3) The evidence submitted at the hearing fails to confirm the Claimant was demonstrating any additional deficits in December 2009.

- 4) Whereas the Claimant demonstrated only three (3) program qualifying deficits, medical eligibility for participation in the Aged/Disabled Waiver Program cannot be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying the Claimant's application for benefits and services through the Medicaid Aged/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 April, 2010.

**Thomas E. Arnett
State Hearing Officer
Member, State Board of Review**