



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

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

June 17, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law for your hearing held on May 27, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through 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 the hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home and Community Based Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

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

cc: Chairman, Board of Review
Kay Ikerd, RN, BoSS
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 10-BOR-927

**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 originally scheduled to convene on April 22, 2010 but rescheduled when the Claimant changed her initial hearing request to indicate she wanted an in-person hearing at the local office (as opposed to the originally requested phone hearing). The Claimant's appeal was reassigned to Thomas Arnett and convened on May 27, 2010. The Claimant's timely appeal was filed on January 15, 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 daughter

-----, Claimant's friend

-----, CM, [REDACTED]

-----, Homemaker, [REDACTED]

Kay Ikerd, RN, BoSS (participated telephonically)

Debra Lemasters, RN, WVMI (participated telephonically)

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 proposal to terminate the Claimant's benefits and services provided through the Medicaid Aged/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 and underlying federal regulations
- D-2 Pre-Admission Screening for Aged/Disabled Waiver Services (PAS) dated January 11, 2010
- D-3 Notice of Potential Denial dated January 13, 2010
- D-3a Verification of patient's conditions/symptoms from Dr. [REDACTED]
- D-4 Notice of Termination/Denial dated February 2, 2010

VII. FINDINGS OF FACT:

- 1) On January 11, 2010, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged and Disabled Waiver Services Program, hereinafter ADW Program [See Exhibit D-2, Pre-Admission Screening (PAS) completed on 1/11/10].
- 2) On or about January 13, 2010, the Claimant was notified of Potential Denial (Exhibit D-3). 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 503.2.

Based on your PAS you have deficiencies in only 2 areas – Bathing, 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 no additional information was received/reviewed except additional verifications requested by WVMi from the Claimant's physician (Exhibit D-3a).

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated February 2, 2010 (Exhibit D-4). 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 2 areas – Bathing 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 medical assessment completed in January 2010 identified two (2) functional deficits. However, because the medical assessment completed in January 2010 fails to identify five (5) functional deficits, medical eligibility for participation in the ADW Program could not be established. In addition, the Claimant was provided an opportunity to submit additional medical documentation during the two-week period following the Potential Denial Notice (D-3), however, no information was submitted.
- 5) The Claimant contends that she remains medically eligible to participate in the ADW Program as she is also demonstrating a functional deficit in Walking, Medication Administration, Vacating and Grooming. The Claimant and her representatives moved to include evidence to demonstrate that the Claimant's functional ability has deteriorated since the January 2010 PAS was completed, however, the Department's objection to the introduction of this evidence was sustained as this evidence was not relevant to the January 2010 evaluation. It should also be noted that the Claimant withdrew her contention that she was demonstrating a deficit in Skilled Needs.

The following addresses findings specific to each of the contested areas:

Walking – In order to qualify for a deficit in walking, the individual must require hands-on physical assistance by another person to ambulate in their home. In Exhibit D-3, Debra Lemasters, the WVMR RN noted – “At visit answered door than [sic] ambulated [sic] back across sun porch into living room. Later in visit ambulated from living room through dining room into kitchen and back when getting her medications. At end of visit ambulated with me across living room onto sun porch when I left an [sic] stood at door while dog was outside than [sic] let the dog back into the home. All ambulation was independent and no loss of balance was noted. Denied any falls and stated she has a cane and walker but does not use them.”

While the Claimant and her representatives contend that the Claimant is functionally deficient in the area of walking due to difficulty with regulating her blood pressure and vertigo, neither the Claimant nor the physician reported she was on medication to treat this condition. Moreover, the Claimant indicated balance was not an issue during ambulation as she denied any falls and reported that she does not use her cane or walker. Based on the evidence, the Claimant was not demonstrating a functional deficit in walking.

Grooming – The Claimant and her representatives contend that the Claimant is unable to perform grooming tasks as she has days when she cannot reach the back of her head. However, on the day of the medical assessment, the Claimant reported that she could do her own mouth care, wash and comb her hair and cut her own toe nails and finger nails. The evidence reveals that the Claimant not only reported she was independent with these tasks during the assessment, but the WVMi RN also documented that the Claimant demonstrated the ability to reach all areas of her head and both feet. Based on the evidence, the Claimant was appropriately assessed as independent in the area of grooming and a deficit cannot be awarded.

Vacating – This area was contested due to reported difficulty with ambulation and vertigo. The WVMi RN documented – “Ambulated independently at visit and no steps to exit her home out onto the yard. No loss of balance noted with ambulation stated has hx [history] of low B/P [blood pressure] resulting in ‘getting dizzy’ and due to this should have supervision to vacate in event of emergency.” The evidence cited in the area of walking fails to support a finding that the Claimant would be unable to vacate her home in the event of an emergency, although the reported “dizzy spells” justifies the need for supervision. This level of assistance, however, does not qualify for a deficit.

Medication Administration – In order to qualify for a deficit in Medication Administration, the individual must require someone else to physically administer their medications. This could include placing medications in the individual’s mouth, administering eye drops and so forth. The Claimant’s daughter testified that she has set her mother’s medication up for the last two years but that she takes the medication by herself and that her mother can open a pill bottle if necessary.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (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:
(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) functional 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 two (2) deficits on a PAS completed by WVMI in January 2010 – Bathing and Continence. The matter before the Board of Review is to determine whether or not the assessment completed by the WVMI RN in January 2010 was accurate based on the information known at the time [emphasis added]. While there were four potential functional deficits contested in the Claimant’s appeal (Walking, Grooming, Vacating and Medication Administration), only vacating was reported to be a concern by the Claimant at the time of the assessment, and none of the disputed areas were contested in the two-week period following the Notice of Potential Denial. Witnesses testifying on behalf of the Claimant contend that the findings on the assessment are inaccurate, yet nothing was done to correct the alleged inaccuracies during the assessment process. Ultimately, it is the responsibility of the Claimant and her representatives to provide accurate information at the time of the assessment, and not the responsibility of the Hearing Officer to reassess the Claimant’s functional abilities with new information that was not made available to the WVMI RN. While all of the contested areas were reviewed to determine if WVMI failed to evaluate and/or consider reported/perceived functional deficits, the evidence demonstrates that the WVMI RN thoroughly evaluated the contested areas and correctly determined that the Claimant was not demonstrating a functional deficit.
- 3) The evidence submitted at the hearing fails to confirm the Claimant was demonstrating any additional deficits in January 2010.
- 4) Whereas the Claimant was demonstrating only two (2) program qualifying functional deficits, the Department was correct in its determination that continued medical eligibility for participation in the Aged/Disabled Waiver Program could not be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department’s proposal to terminate the Claimant’s benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of June, 2010.

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