



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

August 11, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 10, 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
-----, [REDACTED] WV
-----, [REDACTED] WV

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

-----,
Claimant,

v.

Action Number: 10-BOR-929

**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 10, 2010 on a timely appeal filed March 1, 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 brother and representative

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

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

-----, [REDACTED] Claimant's homemaker and witness

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

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

Department's representative and witness 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 Hearing 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 January 20, 2010
- D-3 Notice of Potential Denial dated February 1, 2010
- D-4 Additional information from Claimant’s brother, faxed to WV Bureau of Senior Services , dated February 8, 2010
- D-5 Notice of Denial dated February 19, 2010

VII. FINDINGS OF FACT:

- 1) The Claimant underwent a yearly medical evaluation review for the Title XIX Aged and Disabled Waiver Program from December 2009 through February 2010.
- 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 testified that she completed a PAS (Exhibit D-2) on January 20, 2010 in the Claimant's home and determined that he 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, grooming and incontinence. She added that she recorded the information on the narrative sections of the PAS while she was conducting the assessment in Claimant's home.
- 4) The Department sent the Claimant's case management agency, [REDACTED] WV, a Notice of Potential Denial (Exhibit D-3) on February 1, 2010. The form explained that if the Claimant or his representatives believed there was additional information regarding his medical condition that was not considered, they should submit it within the next two weeks to WVMI.
- 5) Department's representative submitted into evidence a letter written by Claimant's brother and representative (Exhibit D-4), dated February 8, 2010. This statement reads as follows:

My name is -----and I am writing to you on behalf of my brother, [Claimant]. I live in the same building as my brother and I have to assist him daily in his showers. [Claimant] requires assistance in getting in and out of the shower and washing his back. My brother is a very independent person and does not like asking for help but over the last year his condition has deteriorated and he is really unsteady on his feet. I also bring food to [Claimant] almost daily and make sure that it is cut into small enough bites so that he does not get choked on them because he is unable to cut them up himself . . . due to his unsteady hands. My brother has Parkinson's disease and he does not realize he cannot do a lot of things for himself and that is why I am writing you this letter.

- 6) The Department sent the Claimant a Notice of Denial (Exhibit D-5) dated February 19, 2010. The notice was addressed to Claimant and mailed to [REDACTED] -----.
- 7) Claimant's representative contended during the hearing that additional deficits should be awarded in the areas of eating and bathing.

- 8) **Eating** 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 1, “Self/ Prompting,” meaning he is capable of performing this activity by himself, but someone may need to prompt him to do so. The nurse recorded the following pertinent information on the PAS:

[Claimant] denies needing help with eating or cutting up food.

- 9) **Bathing** 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 reviewer recorded the following on the PAS:

[Claimant] denies needing help getting in and out of the shower. Denies needing help with getting back washed, says that he has a brush that he uses. Denies needing help washing feet and legs. [Homemaker] and [Claimant] deny that he needs help with bathing.

- 10) The final area of the PAS is labeled, “Nurse’s overall comments about this PAS review:” and gives the reviewer the opportunity to note specific narrative information and observations made during the PAS. At the end of this section, the reviewer has written as follows:

Reviewed the PAS with [Claimant] and he is in agreement with accuracy, question and answer time provided.

- 11) Claimant’s witness, his homemaker, testified that she did not tell the WVMi nurse that Claimant did not need help bathing, just that she did not help him. She testified that Claimant’s brother went into the bathroom with Claimant to help him take his showers, while she stood outside the bathroom door in case of falls or other accidents. She testified that at times she went to the apartment of Claimant’s brother to get food that he had cooked and cut up for Claimant.

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. On his PAS that was performed on January 20, 2010, Claimant was assessed with three deficits, for vacating a building during an emergency, grooming and incontinence.
- 2) The Department properly notified the Claimant by sending a Potential Denial Notice to Claimant’s Case Management Agency on February 1, 2010. Additional information was provided during the two-week timeframe awarded Claimant in the Potential Denial Notice in the form of a letter written by Claimant’s brother which presented his reasons for assessing Claimant for additional deficits in the areas of eating and bathing.
- 3) The Department was correct in not awarding Claimant a deficit in the area of eating. Department’s witness testified that she often went to the apartment of Claimant’s brother to obtain food that the brother had prepared and cut for eating. She did not testify that Claimant had to be fed. Neither Claimant’s representative nor his witnesses offered any

substantial testimony to support their assertion that a deficit should have been awarded for eating.

- 4) The Department was correct in not giving Claimant a deficit in the functional area of bathing. According to the PAS, Claimant denied needing assistance in this area, and his homemaker agreed with this statement. During the hearing, Claimant's witness testified that she did not tell the assessing nurse that Claimant needed no assistance, but that she did not provide it. However, the witness did not testify that Claimant needed the assistance. Further, the written statement from Claimant's brother did not provide substantial medical evidence to indicate that Claimant could not bathe himself, it was merely a testimonial as to certain activities the brother undertook to assist Claimant.
- 5) Claimant received three (3) deficits in January 2010 in conjunction with his Aged/Disabled Waiver Program medical eligibility review in the areas of vacating a building in an emergency, grooming and continence. Neither Claimant's representative nor his witnesses 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 11th Day of August, 2010.

**Stephen M. Baisden
State Hearing Officer**