



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25301
(304) 746-2360, ext. 2227

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

April 23, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1422

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Tamra Grueser, RN, Bureau of Senior Services
[REDACTED]

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1422

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on April 22, 2015, on an appeal filed February 20, 2015.

The matter before the Hearing Officer arises from the February 11, 2015 decision by the Respondent to terminate the Claimant's eligibility under the Medicaid Aged and Disabled Waiver Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Department was ██████████, RN, West Virginia Medical Institute. The Claimant appeared *pro se*. Appearing as witnesses for the Claimant were ██████████, RN Case Manager, ██████████ and ██████████, Homemaker, RN, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Policy Manual §§ 501.5.1 and 501.5.1.1
- D-2 APS Healthcare, Aged and Disabled Waiver Pre-Admission Screening (PAS), dated January 20, 2015
- D-3 APS Healthcare PAS Summary, dated January 20, 2015
- D-4 Aged and Disabled Waiver Program Medical Necessity Evaluation Request, dated December 4, 2014
- D-5 Pre-Admission Screening for Aged and Disabled Waiver Services, dated February 19, 2014
- D-6 Notice of Potential Termination, dated January 26, 2015
- D-7 Notice of Decision, dated February 11, 2015

Claimant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On February 11, 2015, the Department issued a Notice of Decision to the Claimant informing her of its decision to terminate her Aged and Disabled Services benefits (Exhibit D-7). Based on the January 20, 2015 APS Healthcare Pre-Admission Screening (PAS) conducted by [REDACTED], RN (Nurse [REDACTED] West Virginia Medical Institute (WVMI), it was determined the Claimant did not meet the medical eligibility criteria for the program because only four (4) deficits were established in the critical health areas of the ability to vacate a building in the event of an emergency, bathing, grooming and dressing (Exhibits D-2 and D-7). Eligibility requires deficits be established in at least five (5) of thirteen (13) critical health areas as outlined in the Medicaid Program Regulations (Exhibit D-1).
- 2) As noted in the previous finding, the Department stipulated that the Claimant demonstrated four (4) deficits (the ability to vacate a building in the event of an emergency, bathing, grooming and dressing). The Department, however, maintained that the medical assessment completed in January 2015 by Nurse [REDACTED] fails to identify five (5) functional deficits. (Exhibit D-2)
- 3) The Claimant contended that she should have been awarded additional deficits in the critical health areas of continence of the bladder and bowels, walking and transferring.
- 4) The following will address the findings specific to each of the contested functional areas:

Continence of the Bladder and Bowels – In order to qualify for a functional deficit in continence of the bladder and/or bowels, the individual must have three (3) or more episodes of incontinence on a weekly basis, or total incontinence. The Claimant was identified on the PAS as a level 1 for continence of the bowels (continent) and as a level 2 for continence of the bladder (intermittent incontinence, less than three (3) times per week). At the time of the assessment, the Claimant reported that she had not experienced incontinence of the bowels in over two (2) months. At the time of the assessment, the Claimant reported that she experienced occasional incontinence of the bladder, with urine leakage at night an average of two (2) times per week. The Claimant testified that she told the assessing nurse that she thought the last episode of bowel incontinence was a result of eating apples, but she did not know for certain. The Claimant added that she periodically suffers from bowel incontinence and must watch

the foods that she eats. The Claimant did not dispute the frequency of her bladder or bowel incontinence as reported at the time of the PAS. (Exhibit D-2)

Walking and Transferring – Policy stipulates that an individual must require hands-on physical assistance to qualify for functional deficits in the areas of walking and transferring. The Claimant was identified on the PAS as a level 2 (supervised and/or requiring an assistive device) in the areas of walking and transferring. At the time of the assessment, the Claimant reported that she was able to walk in the home by holding onto the walls and furniture. The Claimant reported that she pushed up on the mattress and chair arms to transfer. The Claimant reported she was able to transfer from the toilet using the sink. On Page 17 of the PAS, under the topic entitled “MINI-ASSESSMENT”, it is documented that the Claimant demonstrated her ability to transfer and walk by pushing up on the arms of the chair, and that she “stood for a short time, then walked” (Exhibit D-2). The assessing nurse, Nurse [REDACTED] testified that the rest of her observation was missing from the PAS printout, but that she recalled that the Claimant walked across the room after she stood for a short time. The Claimant testified that she did not recall walking across the room during the assessment, but that she had walked across the room to open the door when the assessing nurse arrived. She added that it took her a long time to get to the door from her seated position. The Claimant stated that she fell and fractured and later broke her ankle about a year prior to the hearing. She reported that the pain from the ankle is increasing and that she has to rely on her worker and son to help her from the seated position on occasions. The Claimant’s witnesses stated that the Claimant requires physical assistance when getting in and out of the car. The Claimant added that she uses a motorized scooter while shopping. Nurse [REDACTED] stated that the PAS assessment is based on the Claimant’s abilities within the home, and does take into consideration activities which occur outside of the home, including vehicle transportation and shopping.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 sets forth the medical eligibility criteria for the ADW Program. 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.

DISCUSSION

The Claimant and her witnesses contended that the Claimant should have been awarded additional deficits in the areas of walking, transferring and continence of the bowels/bladder.

With regard to the area of continence of the bowels and bladder, the Claimant did not dispute that she suffered from intermittent bladder leakage (fewer than 3 times per week) or that she had only one incident of bowel incontinence in the two (2) months prior to the PAS assessment. At the time of the assessment, and during the hearing, the Claimant reported that she suffers from bowel incontinence if she is not careful in choosing her foods. Because the Claimant reported occasional incontinence during the hearing and at the time of the PAS, the Claimant should have been assessed as a level 2, occasional incontinence of the bowels. However, in order to qualify for a deficit, the Claimant would have to be totally incontinent of the bladder and/or bowels to receive a deficit in the functional area of continence.

In the areas of walking and transferring, all evidence provided indicated that the Claimant required an assistive device to walk and transfer within her home. The Claimant and her witnesses contended that while she was able to walk and transfer in her home using assistive devices, she required one-person assistance when getting in and out of the car and relied on a motorized scooter to shop. However, the PAS assessment is based upon the Claimant's abilities within in the home and does not include activities outside of the home.

Finally, the Claimant argued additional deficits should be awarded because the Claimant has experienced a worsening in her condition as a result of a fall in the previous year, wherein she fractured and broke her ankle. However, the Hearing Officer must evaluate whether the correct policy was followed given the facts and circumstances which existed at the time of the PAS assessment on January 20, 2015.

No additional deficits were established for the January 20, 2015 assessment.

CONCLUSIONS OF LAW

Whereas the Claimant had only four (4) critical health area deficits and medical eligibility policy specifies that there must be five (5) deficits, the Claimant does not meet the medical eligibility criteria for the ADW Program.

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 Aged and Disabled Waiver Medicaid Program.

ENTERED this ____ Day of April 2015.

**Donna L. Toler
State Hearing Officer**