



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 4, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 15, 2009. 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 meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
All Care

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

-----,

Claimant,

v.

Action Number: 09-BOR-1002

**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 July 15, 2009 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 July 15, 2009 on a timely appeal filed March 25, 2009.

It should be noted that this hearing was previously scheduled for May 19, 2009 and May 29, 2009, but was rescheduled due to the Claimant's medical condition. The Claimant's benefits have been continued pending the outcome of this hearing.

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 son
-----, Claimant's nurse, Council on Aging

Kay Ikerd, BOSS
Teena Testa, WVMI

It should be noted that the Department participated by telephone utilizing the LEADERPHONE system.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in its proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/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 February 20, 2009
- D-3 Notice of Potential Denial dated March 2, 2009
- D-4 Notice of Denial dated March 19, 2009

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation for the Title XIX Aged and Disabled Waiver Program during the month of February 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse completed a medical assessment (D-2) on February 20, 2009 and determined that the Claimant no longer meets medical eligibility criteria for the program. The nurse testified the Claimant received three (3) deficits on the Pre-Admission Screening (PAS) assessment in the areas of vacating a building, grooming, and dressing.
- 3) The Department sent the Claimant's listed provider, All Care Home and Community Services, a Notice of Potential Denial (D-4) on March 2, 2009. The form explained that if the Claimant believed she had additional information regarding her medical conditions that wasn't considered, it should be submitted within the next two weeks to WVMI. The Department did not provide evidence to show the Claimant was sent a copy of this notice. No additional information was provided to the Department during this timeframe.

- 4) The Department sent the Claimant a Notice of Denial dated March 19, 2009. The notice was addressed to -----, and mailed to the Claimant at [REDACTED] ----- . The Claimant's correct name and mailing address is -----, -----, -----.
- 5) Representatives for the Claimant contend that additional deficits should be awarded in the following areas:

Eating: which is under Functional Abilities. The Claimant was rated as self/prompting, and was not assessed a deficit in this area. The WVMi nurse recorded the following on the PAS:

When it comes to eating client states she is able to feed herself. Client states once the food have [sic] been prepared she is able to cut up her meats for herself. Client states she does most of the cooking here at the home anyway. Homemaker was making biscuits during the assessment. Homemaker denies helping the client with cutting up her foods.

The WVMi nurse testified that the Claimant's hand grips were "weak bilaterally"; however, since the Claimant indicated she could cut her own foods she was assessed as being able to eat without physical assistance. The Claimant's nurse testified that the Claimant has severe weakness in her left arm because of a skin graft. The Claimant added that she misunderstood what the nurse was asking regarding eating. She thought the nurse was asking what she and the homemaker were able to accomplish together in this regard. She stated she cannot cut her own foods. The Claimant's daughter corroborated her testimony providing that she always brings her dinner in the evening and she cuts the meats up for her because she cannot do this herself.

Bathing: which is under Functional Abilities. The Claimant was rated as self/prompting, and was not assessed a deficit in this area. The WVMi nurse recorded the following on the PAS:

When it comes to bathing client states she takes a shower. Client notes she does have a shower chair with bars on the wall. Client also notes she has bars in front of the tub so she can pull herself up from her commode. Client notes when it comes to bathing she washes everything. She notes she has a shower head she takes off the wall and rinses off. Client notes she is able to get to her feet and her legs. Client notes she would wash so far and she takes a towel and washes her back. Client notes she does stand up and wash her bottom part. Client notes she is able to wash herself from head to toe and she does her bathing at night and when she gets back from dialysis. Client notes no one has to help her into the tub. She notes she has a couple of bars she holds onto. She can take a bath good as long as she is sitting on her shower chair. -
---- ask the homemaker is she had to help her with her bathing and the homemaker denied helping the client with bathing.

The Claimant's daughter stated that the Claimant is eighty two (82) years old and she cannot bathe herself without physical assistance. She added that the homemaker does not help with this since she is only there for four hours in the morning, and the

Claimant bathes at night. She stated that she physically helps her onto the shower stool, and then lifts her legs across the tub. She adds that she then takes the shower nozzle and washes the Claimant some and the Claimant participates to a certain degree, then she helps her slide over on the chair and dries her body. She next must lift her mother off the shower stool most times when finished. The Claimant stated she does require physical assistance. She added she is proud and doesn't want everyone to know she needs help with this activity. The nurse stated that if the homemaker is not helping the Claimant with this activity in the home she does not assess a deficit.

Bladder incontinence: which is under Functional Abilities. The Claimant was rated as being "self/prompting" in this area, and not assessed a deficit. The WVMi nurse recorded the following on the PAS:

When it comes to her bladder client notes she does produce urine. Client denies any accidents on herself with her bladder. She notes she can get herself to the bathroom every time.

The Claimant testified that she was wearing pads daily when the PAS was completed. She states she misunderstood what the nurse was asking her about "accidents". She states she considered an "accident" as when she soiled the pads and they overflowed. Therefore she said she didn't have accidents. The Claimant stated she did have "leakage" of urine at the time of the PAS.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1) – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

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 501.3.1.1 –

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 ADW 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 (D-1) MEDICAL CRITERIA:

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 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.

- 9) Aged/Disabled Home and Community Based Waiver Policy Section 501.3.4.1 states in pertinent part:

RESULTS OF MEDICAL REEVALUATION

B. Denial

If it is determined that the member does not meet medical eligibility, the member, the referring physician, the Personal Options Fiscal/Employer Agent- RC, and member's representative, if applicable, will be notified by a Potential Denial letter. This letter will advise the member of the reason(s) for the potential denial, listing the areas in which deficiencies were found and notice that the medical eligibility standard has not been met. A copy of the PAS and ADW policy will also be included with the "Potential Denial" Letter. The member will be given two weeks to submit supplemental medical information to the QIO; supplemental information received by the QIO

is given to the reviewing RN,. Information submitted after the two-week period will not be considered.

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. Policy also stipulates that in the event the Department finds the Claimant to be ineligible at the time of reevaluation, they must send the member (Claimant), the referring physician, and the member's representative, if applicable, a Potential Denial letter, which includes the reason for the potential denial, listing the areas in which deficiencies were found and notice that the medical eligibility standard has not been met. The letter also is to include a copy of the PAS and ADW policy. The member (Claimant) is to be given two weeks to submit supplemental medical information to be considered.
- 2) The Claimant received three (3) deficits in February 2009 in conjunction with her Aged/Disabled Waiver Program annual re-evaluation in the areas of vacating a building, grooming, and dressing.
- 3) The evidence is clear in that the Department failed to show they sent the Claimant a Potential Denial letter with accompanying PAS and policy, which in effect denied her of an opportunity to address the issues timely during the two week timeframe allowed by policy. Therefore, evidence provided during the hearing will be given more weight as if it were submitted timely.
- 4) It is clear from the testimony provided during this hearing that the Claimant misunderstood much of the questions being asked of her during the assessment, which would explain her sometimes contradictory statements. The Claimant's explanation that she thought the questions being asked of her during the assessment related to her functioning "with the help of the homemaker", and not her own level of functioning, is plausible. Documentation by the WVMH nurse during the completion of the PAS supports the Claimant's hand grips were "weak bilaterally", which corroborates testimony provided by the Claimant's witnesses.
- 5) The testimony from the Claimant's daughter is given significant weight, as she provides care for the Claimant daily, and assists her with the activities in question.
- 6) The totality of the evidence and testimony presented during this hearing support the finding of one (1) additional deficit in the area of bathing, and one (1) additional deficit in the area of eating, for a total of two (2) additional deficits. Although the Claimant's testimony during the hearing was that she is incontinent of bladder, the totality of the evidence provided does not support the award of a deficit in this area.
- 7) The required five (5) deficits have 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 **reverse** 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 4th Day of August, 2009

**Cheryl Henson
State Hearing Officer**