



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 19, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 4, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of medical eligibility for the Medicaid Aged and Disabled Waiver (ADW) 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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically.

The information submitted at your hearing revealed that the Department was correct in its assessment of no deficits and medical ineligibility for the ADW program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny benefits under the ADW Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Angel Khosa, BoSS
Michelle Wiley, RN, WVMI

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

-----,

Claimant,

v.

Action Number: 09-BOR-1122

**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 August 19, 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 June 4, 2009 on a timely appeal, filed April 14, 2009.

All persons offering testimony were placed under oath.

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 sister
Michelle Wiley, RN, WVMI
Angel Khosa, BoSS

All persons participated by speakerphone.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its action to deny medical eligibility for the Medicaid Aged and Disabled Waiver Program to the Claimant.

V. APPLICABLE POLICY:

Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2
- D-2 Pre-Admission Screening (PAS) form, dated February 26, 2009
- D-3 Notice of Potential Denial dated March 2, 2009
- D-4 Notice of Denial dated March 19, 2009

VII. FINDINGS OF FACT:

- 1) Claimant is a 52-year-old female applicant for Medicaid Aged and Disabled Waiver (ADW) Services. The Department's WVMI nurse completed a Pre-Admission Screening (PAS) of the Claimant to evaluate her medical eligibility for the program on February 26, 2009 (Exhibit D-2). The Department issued the Claimant a notice of potential denial on March 2, 2009 (Exhibit D-3), and a denial notice on March 19, 2009 (Exhibit D-4). Both notices advised the Claimant that no deficits were awarded, and that a minimum of five deficits are required for medical eligibility. Testimony from the Department confirmed that no additional information was received between the issuance of the potential denial notice and the denial notice.
- 2) The Claimant and her witness offered extensive testimony describing her medical problems, limitations, and service needs outside the scope of the ADW Program or this hearing. No specific areas of dispute with the PAS were identified. The Department questioned the Claimant specifically on each area of the PAS considered for medical eligibility for the ADW Program, and no areas were identified.

- 3) Policy from the Aged and Disabled Home and Community-Based Services Waiver Policy Manual §501.3.2 (Exhibit D-1) states:

501.3.2 MEDICAL CRITERIA

An individual must have five (5) deficits on the Pre-Admission Screening Form (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.

| Section | Description of Deficits | |
|----------------|--|--|
| #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 | |
| a. | Eating | Level 2 or higher (physical assistance to get nourishment, not preparation) |
| b. | Bathing | Level 2 or higher (physical assistance or more) |
| c. | Dressing | Level 2 or higher (physical assistance or more) |
| d. | Grooming | Level 2 or higher (physical assistance or more) |
| e. | Continence, bowel | Level 3 or higher; must be incontinent. |
| f. | Continence, bladder | |
| g. | Orientation | Level 3 or higher (totally disoriented, comatose). |
| h. | Transfer | Level 3 or higher (one-person or two-person assistance in the home) |
| i. | Walking | Level 3 or higher (one-person assistance in the home) |
| j. | 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 for 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. | |

All of the above medical criteria information also applies to Personal Options.

VIII. CONCLUSION OF LAW:

- 1) The Aged and Disabled Waiver policy provides that an individual must have 5 qualifying deficits to be medically eligible for the Aged and Disabled Waiver program. The WVMI nurse determined, at the time of the PAS, that the Claimant had no qualifying deficits. Despite considerable discussion of her health issues, the Claimant identified no areas that were in dispute with the findings on the February 26, 2009 PAS. The decision of the Department to deny ADW services based on a finding of medical ineligibility is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to deny Medicaid Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of August, 2009.

**Todd Thornton
State Hearing Officer**