



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26555

Joe Manchin III  
Governor

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

September 10, 2009

-----  
-----  
-----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 19, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for 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 fails to demonstrate that you require a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny your application for benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI  
CCIL

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1266**

**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 September 10, 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 August 19, 2009 on a timely appeal filed May 7, 2009.

**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 witness, Coordinating Counsel for Independent Living (CCIL)

Kay Ikerd, RN, Bureau of Senior Services (BoSS) - Participated telephonically

Debra Lemasters, RN, West Virginia Medical Institute (WVMI) - Participated telephonically

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether or not the Department was correct in its action to deny the Claimant's application for benefits and services 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
- D-2 Pre-Admission Screening (PAS) assessment completed on April 3, 2009
- D-3 Notice of Potential Denial dated April 7, 2009
- D-3a Additional medical information from Dr. [REDACTED] (received 4/6/09)
- D-4 Notice of Termination/Denial dated April 24, 2009

#### **VII. FINDINGS OF FACT:**

- 1) On April 3, 2009, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged & Disabled Waiver Services Program, hereinafter ADW Program (Exhibit D-2, Pre-Admission Screening (PAS) form).
- 2) On or about April 7, 2009, 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 501.3.2.

Based on your PAS you have deficiencies in only 3 areas – Vacating a Building, Bathing and Grooming.

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 additional information was received from the Claimant physician (Exhibit D-3a), however, this information was provided at the request of the evaluating nurse from West Virginia Medical Institute (WVMI) and fails to identify functional deficits.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated April 24, 2009 (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 3 areas – Vacate a Building, Bathing and Grooming.

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 Claimant demonstrates three (3) deficits but indicated the medical assessment completed in April 2009 fails to identify five (5) functional deficits required to establish medical eligibility for participation in the ADW Program.
- 5) The Claimant and his witness contend that the Claimant should have been found to be medically eligible as he is also demonstrating a functional deficit in the following areas: Incontinence (bladder), Orientation, Walking and Medication Administration.

**Incontinence** – The Registered Nurse (RN) from West Virginia Medical Institute (WVMI) documented that the Claimant reported bladder incontinence occurs “rarely” when questioned during the assessment. The Claimant testified during the hearing that he was embarrassed about the truth and that he actually has accidents that require changing his shorts on an average of two (2) times per week. The Department noted, however, that bladder incontinence only qualifies for a deficit if it occurs (3) three or more times per week. The Claimant does not meet the standard outlined in policy to qualify for a functional deficit in incontinence.

**Orientation** – The Claimant presents a diagnosis of “Mild Senile Dementia,” however, the WVMI RN testified that the Claimant was oriented to x3 (person, place and time) on the day of the assessment. The Claimant’s witness testified that the Claimant is unable to handle his financial affairs and he is forgetful. Pursuant to existing policy, an individual must be totally disoriented or comatose in order to qualify for a deficit. Although it is apparent the Claimant is demonstrating some difficulty in this area, he clearly fails to qualify at a level 3 (totally disorient). Based on the evidence, the Claimant does not qualify for a deficit in orientation.

**Walking** –The Claimant was assessed at a level 2 in walking (assistive device) as he relies on a cane and furniture to ambulate in his home. In Exhibit D-2, page 8 of 9 the WVM RN noted that “Gait was slow but steady.” The Claimant’s witness testified that while the assessment is consistent with written policy, the Claimant suffered a fall in September 2008 and he is often unsteady. The Claimant’s witness purported that he does not actually require physical assistance but she feels this is an area of need for the Claimant. Policy, however, requires that an individual require hands-on physical assistance to ambulate in order to qualify for a deficit in walking. Based on the evidence, the Claimant was accurately assessed at a level 2 and does not qualify for a deficit in walking.

**Medication Administration** – The Claimant was assessed as requiring prompting and supervision as the Claimant reported he was able to administer his own insulin and he has organized his pills so that morning and evening doses are in different locations and his medications that are taken twice daily are on the microwave. The Claimant’s poor vision causes greater effort to remain organized, however, he continues to demonstrate the ability to administer his own medications with little assistance. The Claimant does not qualify for a functional deficit in the area of medication administration.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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 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.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Medicaid policy requires that an individual must demonstrate five (5) 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 three (3) deficits on a PAS completed by WVMi in April 2009 – Vacate a Building, Bathing and Grooming.
- 3) The evidence submitted at the hearing fails to confirm the Claimant was demonstrating any additional deficits in April 2009.
- 4) Whereas the Claimant demonstrated only three (3) program qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying the Claimant's application for benefits and services through the Medicaid, 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 10<sup>th</sup> Day of September, 2009.**

---

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