



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Joe Manchin III  
Governor

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

November 2, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 14, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your 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]

The information submitted at your hearing reveals that your medical condition no longer requires a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home and Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

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

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

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1403**

**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 November 2, 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 originally scheduled to convene on September 8, 2009 and again on September 15, 2009 but convened on October 14, 2009 on a timely appeal filed May 14, 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

-----, Case Manager (CM), Catholic Charities of West Virginia (CCWV)

-----, Homemaker RN, CCWV

-----, Homemaker, CCWV

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. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its proposal to terminate the Claimant's benefits and services provided 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 17, 2009
- D-3 Notice of Potential Denial dated April 20, 2009
- D-3a Correspondence from [REDACTED] MD., PC dated April 23, 2009
- D-3b Medical notation from physician's visit dated January 17, 2009 and March 28, 2009
- D-4 Notice of Termination/Denial dated May 8, 2009

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

- 1) On May 17, 2009, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged/Disabled Waiver Services Program, hereinafter ADW Program {See Exhibit D-2, Pre-Admission Screening (PAS) completed on 4/17/09}.
- 2) On or about April 20, 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 – Vacate 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/reviewed and has been identified as Exhibits D-3a and D-3b.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated May 8, 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 May 2009 fails to identify five (5) functional deficits as required by the policy that governs the ADW Program.
- 5) The Claimant and her representatives contend that she remains medically eligible to participate in the ADW Program as she is demonstrating a functional deficit in dressing, transferring and walking. The following will address each of the contested areas:

Dressing – The Claimant was assessed at a level 1 (self/prompting) in the area of dressing by the WVMH RN. -----, Claimant's homemaker, purported that the Claimant attempted to use a sports bra, as documented in the PAS, but it was uncomfortable and she had difficulty getting her arms through the holes. Ms. [REDACTED] further testified that the Claimant needs assistance with fastening her bra, although it was noted on the PAS that the Claimant could complete this task. The Claimant and -----, Homemaker RN, noted the Claimant's back problems (osteoporosis with a compression fracture) and indicated this condition contributes to the Claimant's difficulty with dressing, especially putting on slacks, socks and shoes. The PAS includes documentation to corroborate the Claimant's diagnosed back condition and it is noted that the Claimant reported she must use a device to pull up her socks and that her homemaker must tie her shoes when that type of shoe is worn. This evidence, when considered in its entirety, indicates the Claimant requires physical assistance with dressing and a deficit is therefore established.

Transferring – The Claimant acknowledged that she uses a lift chair to assist with transferring but indicated she cannot use other furniture in her home. Debra Lemasters, RN, WVMH testified that the Claimant reported using the sink to assist with transferring on and off the toilet and her bed is elevated with a hand bar to assist her with transferring. The Claimant’s physician notes (Exhibit D-3a) that the Claimant has “difficulty transferring from her toilet to her walker...” however, he stops short of indicating she requires physical assistance. While it is clear that the Claimant requires some accommodations to assist with transferring, a deficit can only be established when an individual requires hands-on physical assistance. In the absence of evidence to the contrary, a deficit (level 3, physical assistance) cannot be awarded in transferring.

Walking – In order for an individual to qualify for a deficit in walking, the individual must require physical assistance to walk. The Claimant testified that she can walk but she is unable to walk very far. She reported that she is able to walk from room-to-room in her home and it is noted on the PAS (D-2, Page 8 of 9) that the Claimant ambulated with her wheeled walker across the living room, to her bedroom and back. In Exhibit D-3a, the Claimant’s physician indicates – “She does not ambulate without the use of a wheeled walker.” Pursuant to the ADW Policy guidelines, an individual who requires supervision / assistive device is designated a level 2. Based on the evidence, the Claimant does not require physical assistance (level 3) with walking and therefore does not qualify for a deficit in this area.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (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 – vacating, bathing and grooming.
- 3) The evidence submitted at the hearing identifies one additional deficit in the area of dressing.
- 4) Whereas the Claimant demonstrates only four (4) program qualifying deficits, continued 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 proposal to terminate the Claimant's 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 2<sup>nd</sup> Day of November, 2009.**

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