



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

September 28, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 27, 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 continues to 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 **reverse** 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
CCIL

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

-----,

Claimant,

v.

Action Number: 09-BOR-1445

**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 28, 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 27, 2009 on a timely appeal filed June 5, 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 and MPOA

-----, RN, Homemaker RN, WV Choice

-----, Case Manager (CM), Coordinating Counsel for Independent Living (CCIL)

-----, RN, CCIL (Observing)

Kay Ikerd, RN, BoSS (Participated telephonically)

Debra LeMasters, RN, 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 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 May 4, 2009
- D-2a Prescription (Rx) pad note signed by [REDACTED] M.D. on May 18, 2009
- D-3 Notice of Potential Denial dated May 8, 2009
- D-4 Notice of Termination/Denial dated May 27, 2009

VII. FINDINGS OF FACT:

- 1) On May 4, 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 5/4/09}.
- 2) On or about May 8, 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 Exhibit D-2a.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Noticed dated May 27, 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 (Vacating, Bathing and Grooming) but indicated the medical assessment completed in May 2009 fails to identify five (5) functional deficits necessary to establish medical eligibility for participation in the ADW Program.
- 5) The Claimant and her representatives contend that the Claimant remains medically eligible to participate in the ADW Program as she is also demonstrating a functional deficit in – Dressing and Incontinence. The following will address the findings in each of the contested areas:

Dressing – Documentation found in Exhibit D-2, page 8 of 9, reveals the Claimant reported that she requires assistance with fastening her bra due to numbness in her left hand. The Claimant testified that she is unable to fasten her bra and occasionally requires assistance putting on her shirt. The Claimant reported she has had two surgeries to correct nerve damage in her left arm/hand but she continues to have difficulty. The Claimant indicated that while she has learned to do most things with her right arm, she is limited to what she can do and simply cannot fasten her bra with one hand. The Claimant's argument is reasonable and supported by a documented medical condition. Based on the evidence, the Claimant requires physical assistance (Level-3) in dressing and a deficit is therefore established.

Incontinence – The WVMi RN documented the Claimant reported both bowel and bladder incontinence 2 or 3 times per week. The Claimant submitted Exhibit D-2a, physician diagnosis of bowel and bladder incontinence and it was reported that she typically uses 93 incontinence pads per month. Credible testimony received at the hearing reveals the Claimant and her Homemaker RN understood the question to be regarding the number of incontinence episodes per day, as opposed to the number per week. The Claimant contends that because the question was misunderstood, incorrect information was provided to the WVMi RN. While the Department contends that these areas are reviewed thoroughly for accuracy, in light of the testimony and documentation presented at the hearing, the Claimant is demonstrating a functional deficit (Level 3, bowel and bladder) in incontinence.

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 May 2009 – Vacating, Bathing and Grooming.
- 3) The evidence submitted at the hearing identifies two additional deficits – Dressing and Incontinence.
- 4) Whereas the Claimant demonstrates five (5) program qualifying deficits, continued medical eligibility for the Aged/Disabled Waiver Program is therefore established. The Claimant's LOC determination shall include the point(s) awarded from this decision.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 28th Day of September, 2009.

**Thomas E. Arnett
State Hearing Officer**