



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

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

October 12, 2009

Dear: -----

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 25, 2009. Your hearing request was based on the Department of Health and Human Resources' deny your application for Medicaid Eligibility under the Aged and Disabled Waiver Program.

In arriving at a decision, the State Hearings 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 and Disabled Waiver program is based on current policy and regulations. These regulations provide that the 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] Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver Program.

The information which was submitted at your hearing revealed that you did not have the required number of deficits to be approved for the Aged and Disabled Waiver program.

It is the decision of the State Hearings Officer to Uphold the action of the Department to deny your application for the Aged and Disabled Waiver Program.

Sincerely,

Eric L. Phillips
State Hearings Officer
Member, State Board of Review

cc: Board of Review
Kay, Ikerd, BoSS

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

-----,

Claimant,

v.

Action Number: 09-BOR-1485

**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 October 12, 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 September 25, 2009 on a timely appeal, filed July 9, 2009.

II. PROGRAM PURPOSE:

The Program entitled the Aged and Disabled Waiver program is administered by the West Virginia Department of Health & Human Resources. 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 representative and daughter

-----, RN Select In Home Services

Kay Ikerd, RN Boss, participated telephonically

Barbara Plum, RN WVMI, participated telephonically

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its denial of Claimants application for the Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services.
- D-2 Pre-Admission Screening Form dated April 14, 2009
- D-3 Potential Denial of Services dated May 7, 2009
- D-4 Notice of Denial of Services dated May 22, 2009

Claimant's Exhibits

- C-1 Statement from Dr. [REDACTED]

VII. FINDINGS OF FACT:

- 1) On April 14, 2009 the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for his eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, the Pre-Admission Screening Form (PAS).
- 2) On or around May 5, 2009, the Claimant was notified by Exhibit D-3, Notice of Potential Denial; that he may be ineligible for services provided by the Aged and Disabled Waiver Program. This notice in pertinent part states:

To be eligible for benefits you must be deficient in at least 5 of 15 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual Chapter 503.2.

Based on you PAS you have deficiencies in only 4 areas. Vacating a Building, Bathing, Grooming, and Dressing.

This notice allowed the Claimant to submit additional information regarding his medical condition to WVMI within a two week timeframe.

It shall be noted that the two week timeframe expired on May 21, 2009. On May 22, 2009 Exhibit C-1 was submitted by the Claimant's physician Dr. [REDACTED] for evaluation purposes this documentation was considered untimely by WVMI.

- 3) The Claimant was notified on May 22, 2009 via Exhibit D-4, Notice of Denial, that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. 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 Aged and Disabled Waiver Program. A decision has been made to terminate/deny your homemaker and case management services. You have the 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 the areas of vacating a building, bathing, grooming, and dressing.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) The Claimant and his witnesses contend that an additional deficit should be awarded in the area of administering medications.

The Claimant's nurse through his homemaker agency purported that Exhibit C-1, a note from Dr. [REDACTED] was submitted to WVMi outside the two week period for consideration in approval of the Claimant's PAS. This Exhibit in part states:

Patient needs total care for meds [sic]. He does not read and know meds [sic].

The Claimant's daughter, ----, testified that her father is illiterate and cannot understand his medications. She further testified that she fills the Claimant's pill boxes and reminds him when to take his medications. Testimony revealed that if Claimant was left unattended while administering medications, he would simply forget to take them or inform his daughter that the medications were not necessary for him to ingest.

The WVMi nurse assessed the Claimant with prompting and supervision in regards to administering medication. The Department's representative testified that to be awarded a deficit in the area of medication administration, the individual being assessed would need to lack the competency to place the medications in his own mouth. Deficits are awarded to individuals in this area when an individual must have his medication crushed and placed in food (i.e. applesauce) or administered through a feeding tube.

- 5) 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.

6) 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.

7) 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) tracheotomy, (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) Policy dictates that in order to be determined eligible for services under the Aged and Disabled Waiver Program an individual must be deficient in at least five (5) health areas on the Pre-Admission Screening Form (PAS).
- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the health areas of vacating a building, bathing, grooming, and dressing.
- 3) Testimony from the Claimant's representative revealed that the Claimant is illiterate and requires prompting and supervision when administering his own medication. This difficulty in the area contested does not constitute a total dependence of the Claimant in regards to administration of his own medication and the WVMI nurse correctly assessed prompting and supervision when evaluating the potential deficit. A fifth deficit cannot be awarded in the area of administration of medication; therefore the Department was correct in its assessment for medical eligibility for the Aged and Disabled Waiver program.

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 _____ day of October 2009.

**Eric L. Phillips
State Hearing Officer**