



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

October 19, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 23, 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

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-1570**

**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 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 September 23, 2009 on a timely appeal filed July 10, 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

Kay Ikerd, RN, Bureau of Senior Services (BoSS)

Debra Lemasters, RN, West Virginia Medical Institute (WVMI)

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

All parties participated telephonically.

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

The question 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 May 29, 2009
- D-3 Notice of Potential Denial dated June 1, 2009
- D-4 Notice of Termination/Denial dated June 16, 2009

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

- 1) On May 29, 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 June 1, 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 no additional information was received.

- 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 (vacating, bathing and grooming) but indicated the medical assessment completed in May 2009 fails to identify five (5) functional deficits required to establish medical eligibility for participation in the ADW Program.
- 5) The evidence demonstrates that the Claimant only wears house dresses and slippers, or slip-on shoes. She reported that she no longer wears a bra and although she seldom leaves her home, she does have some difficulty putting on her pants if she must go somewhere – but indicated she is able get her pants on. The Claimant testified that she occasionally gets her house dresses on inside-out and that dressing is the one area of the assessment she believes is inaccurate. It should be noted, however, that the Claimant did not contest the Department's findings regarding her functional ability in any of the other assessed areas.
- 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 May 2009 – Vacate a Building, Bathing and Grooming.

- 3) The Claimant contested the Department's findings in the functional area of dressing only. Even if a functional deficit could be awarded in dressing, there is insufficient evidence to demonstrate the Claimant is demonstrating five (5) functional deficits as required by policy.
- 4) Whereas the evidence fails to confirm the Claimant is demonstrating five (5) 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 19<sup>th</sup> Day of October, 2009.**

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