



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN
Cabinet Secretary

December 2, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 2, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of your medical eligibility under 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 your hearing reveals that you meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to deny your eligibility for benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: 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-1678

**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 December 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 convened on December 2, 2009 on a timely appeal filed August 13, 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, representing herself
Cecilia Brown, BOSS, representing the Department
Paula Clark, RN, WVMI, Department witness

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its decision to deny the Claimant's medical eligibility for benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual Section 501, three (3) pages
- D-2 Medical Necessity Evaluation Request form signed May 27, 2009
- D-3 Pre-Admission Screen Form dated July 17, 2009, nine (9) pages
- D-4 Potential Denial Notice dated July 21, 2009
- D-5 Denial Notice dated August 5, 2009

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an initial evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of July 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse, Paula Clark, completed a medical assessment (D-3) on July 17, 2009 in the Claimant's home and determined that she does not meet the medical eligibility criteria for the program. The nurse testified that the Claimant received four (4) deficits on the Pre-Admission Screening (PAS) assessment in the areas of bathing grooming, dressing, and vacating a building.
- 3) The Department sent the Claimant's physician a Notice of Potential Denial (D-4) on July 21, 2009. The form explained that if the Claimant believed she had additional information regarding her medical condition that was not considered, it should be submitted within the next two weeks to WVMI. No additional information was submitted during this timeframe.
- 4) The Department sent the Claimant a Notice of Denial (D-5) dated August 5, 2009, and the Claimant requested a hearing on August 13, 2009.
- 5) The Claimant testified during the hearing that she believes she meets the medical requirements in order to be assessed deficits in the areas of Bladder/Bowel Incontinence and Walking.

In the area of Bladder/Bowel Incontinence the Claimant was rated as “occasionally incontinent” and not assessed a deficit. The WVMi nurse recorded the following on the PAS:

APPLICANT REPORTS SHE HAS ACCIDENTS WITH HER BLADDER ABOUT 1-2 TIMES A WEEK. APPLICANT REPORTS SHE HAS ACCIDENTS WITH HER BOWELS ABOUT 1-2 TIMES A WEEK. APPLICANT DENIES WEARING PADS OR PULL UPS.

The Claimant testified that she believes the nurse misunderstood her comments when this area was discussed. She states she told the nurse that she had accidents three (3) to four (4) times a week. She states that she meant three (3) to four (4) times per week with her bladder and three (3) to four (4) times per week with her bowels. She stated that the nurse assumed she meant three (3) to four (4) times per week total for both her bowel and bladder. The Claimant’s homemaker, [REDACTED] testified that she does the Claimant’s laundry and that she has accidents often. The WVMi nurse testified that normally when she asks questions about the bladder and bowel continence she asks them separately. The Claimant added that she has diarrhea often which adds to the bowel accidents.

In the area of Walking the Claimant was rated as needing “supervised/assistive device” and not assessed a deficit. The WVMi nurse recorded the following on the PAS:

APPLICANT DEMONSTRATED SHE IS ABLE TO WALK FROM HER LIVING ROOM TO THE BATHROOM AND BACK. APPLICANT REPORTS SHE USES HER WALKER WHEN SHE GOES OUT SOMETIMES. APPLICANT HELD TO THE COUCH AND WALLS DOWN THE HALLWAY AS SHE WALKED. APPLICANT WAS STEADY WITH WALKING. APPLICANT REPORTS SHE HAS A CANE BUT DOES NOT USE IT.

The Claimant testified that although she is able to walk at times by holding on to walls and furniture, she often falls, and when she gets into a crouched position she can’t get back up. She added that she is only able to walk or stand for between two (2) to seven (7) minutes at a time and then her legs will “fold up” under her. The Claimant’s homemaker stated that the Claimant mostly sits in her chair, and that she can walk to the bathroom and back by holding onto the side of the walls. She added that she does not assist the Claimant when she goes to the bathroom. The homemaker added that the Claimant is able to walk into the kitchen by herself.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1) – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

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 501.3.1.1 states in pertinent part:

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 ADW 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 (D-1) MEDICAL CRITERIA states in pertinent part:

An individual must have five (5) deficits on the Pre Admission Screening (PAS), Attachment 14, 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) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver (ADW) Program.
- 2) Policy also stipulates that in the event the Department finds the Claimant to be ineligible at the time of reevaluation, they must send the member (Claimant), the referring physician, and the member's representative, if applicable, a Potential Denial letter, which includes the reason for the potential denial, listing the areas in which deficiencies were found and notice that the medical eligibility standard has not been met. The letter also is to include a copy of the PAS and ADW policy. The member (Claimant) is to be afforded two weeks to submit supplemental medical information to be considered.
- 3) The Department provided evidence to show it sent the Claimant's physician a Potential Denial Notice (D-4) on July 21, 2009. There was no evidence provided to show the Claimant was afforded a copy of this Potential Denial Notice. The Claimant did not send additional information in during the two week timeframe allotted.
- 4) The Claimant received four (4) deficits in July 2009 in conjunction with her Aged/Disabled Waiver Program initial evaluation in the areas of bathing, grooming, dressing, and vacating a building. The Claimant has contested the assessed ratings in the areas of Bladder/Bowel Incontinence and Walking.
- 5) In order to be assessed a deficit in the area of Bladder/Bowel Incontinence the Claimant would need to have bowel or bladder accidents at least three times weekly. The totality of the evidence is sufficient to show that the Claimant has bowel incontinence more than three times weekly and she is therefore awarded one (1) deficit in this area. The Claimant's testimony in this area, along with the homemaker's testimony, supports this finding. The evidence supports that there was a misunderstanding in communication when this element of the PAS was assessed.
- 6) In order to be assessed a deficit in the area of Walking the Claimant would need to require one person to physically assist her with this activity in the home. The testimony and evidence provided during the hearing do not support the finding of a deficit in this area. The Claimant's homemaker clearly testified that although the Claimant is weak and does not walk often during the day, she does walk throughout her home without any physical assistance at this time.
- 7) With the additional one (1) deficit awarded for bowel incontinence, the Claimant now has five (5) deficits and meets the medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to deny the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The additional one (1) deficit awarded for Bladder/Bowel Incontinence is to also be considered by the Department when determining level of care for the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of December 2009,

**Cheryl Henson
State Hearing Officer**