



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

November 5, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 22, 2009. Your hearing request was based on the Department of Health and Human Resources' termination 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 continue to 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 terminate 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
Special Touch Case Management Agency

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

-----,

Claimant,

v.

Action Number: 09-BOR-1702

**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 5, 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 October 22, 2009 on a timely appeal filed August 17, 2009.

It should be noted here that the record was left open until November 5, 2009 to allow the Claimant and the Department additional time to provide relevant evidence.

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:

██████████ Case Manager, Special Touch, representing the Claimant
Kay Ikerd, BOSS, representing the Department
Isabelle Bukac, 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 proposal to terminate the Claimant's 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 Pre-Admission Screening (PAS) assessment completed June 8, 2009, seven (7) pages
- D-3 Notice of Potential Denial dated June 16, 2009, two (2) pages
- D-5 Notice of Denial dated August 11, 2009, two (2) pages

Claimant's Exhibits:

- C-1 Letter from CCIL dated June 24, 2009, two (2) pages
- C-2 WVMI DME Report dated September 24, 2009, one (1) page
- C-3 Fax from Special Touch for Seniors received October 28, 2009, eight (8) pages

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing a reevaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of June 2009.
- 2) The West Virginia Medical Institute (WVMI) nurse, Isabelle Bukac, completed a medical assessment (D-2) on June 8, 2009 in the Claimant's home and determined that she no longer meets 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 then Case Management Agency, Coordinating Council for Independent Living, a Notice of Potential Denial (D-3) on June 16, 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.
- 4) The Department received a letter (C-1) from the Claimant's Case Management Registered Nurse (RN) on June 24, 2009 which stated the Claimant's physician has identified three (3) additional deficits for the Claimant including (1) requires one person assistance with transfers, (2) Incontinent care as needed, and (3) assistance with meal

preparation and feeding. Attached to the RN's letter was a statement from the physician which is difficult to read. After close scrutiny, it is found to say the following:

Dr. [REDACTED]

June 18, 2009

Pt. requires transfer assistance
Incontinent care PRN
Meal preparation/feeding assistance

Signature of Physician

The Department contends the physician's statement is too vague. The WVMI nurse testified that she did not contact the physician for additional clarification of the associated functional needs mentioned. The Department made no changes to the PAS as a result of this information.

- 5) The Department sent the Claimant a Notice of Denial (D-3) dated August 11, 2009, and the Claimant requested a hearing on August 17, 2009.
- 6) The Claimant's Representative provided that she is concerned that the Claimant's responses during the PAS assessment were not accurate due to the fact that she is intermittently disoriented. She does not have a diagnosis of dementia or other related condition, but was listed by the RN during the PAS assessment as intermittently disoriented. The RN stated although the Claimant was alone for the assessment and did appear confused at times, she is confident that she answered the questions accurately. In relation to the Claimant's orientation during the assessment the RN recorded the following:

Appeared confused as to what and when to take meds

Member appeared somewhat confused as to the content of my visit, but was friendly and welcoming. She did not remember receiving anything in the mail from WVMI/Waiver program; however the information that was mailed to member was on her reffridgerator [sic]. I brought that to the member's attention and she appeared to have some recall.

Orient to day, date, states "since I don't work I don't keep up with dates"

Member's speech is clear, coherent, low, of normal cadence, relevant to topic

The WVMI nurse testified that she did have to prompt the Claimant for the date. The Claimant's Representative stated that the Claimant is sometimes coherent and added "one minute she is here and one minute later she is not".

- 6) The Claimant contends that additional deficits should be awarded in the areas of eating and bladder incontinence.

In the area of Bladder Incontinence the Claimant was rated as “Continent”. The WVMI nurse recorded the following on the PAS:

MEMBER DENIES UA ACCIDENTS.

The Claimant’s Representative states that the Claimant is often not coherent which should call her responses into question. She also added that she began working with the Claimant just after the denial decision was made and has limited information to provide regarding the Claimant’s functional abilities relevant to the June 2009 PAS assessment.

- 7) The Claimant changed Case Management Agencies around the time of the PAS assessment. In light of this information, the record is being left open for submission of additional evidence to support the Claimant’s functional abilities in the home. The Department Representative, Kay Ikerd, stated that Case Management Agencies are supposed to share information when changes occur; however, the Claimant’s Representative has not received information from the previous Agency. The deadline for submission of evidence was listed as November 5, 2009.
- 8) In the area of Eating the Claimant was rated as “self/prompting”, meaning she is able to eat her food once it is prepared and placed before her. In order to require physical assistance the Claimant would need to require physical assistance with cutting up her foods in order to eat them, such as meats. The WVMI nurse recorded the following on the PAS:

Member reports that she has a neighbor who will bring home prepared meals...from Kentucky Fried Chicken, apx 3 times a week. Member is able to prepare simple meals and is able to feed self without assistance [sic] or mechanical devices. Member was able to raise arms to chest level, was not able to cross legs, grip was strong, bilateral, able to bend over and touch lower extremities [sic] from a sitting position, able to touch her back with both hands, able to flex and extend both hands.

The Claimant’s Representative stated that the Claimant cannot cut up her own food because her hands shake often and she will cut herself. She agreed that the Claimant can prepare simple meals like a sandwich, but she is unable to cut her own food. The Physician wrote on his statement (C-1) that the Claimant needs help with “meal preparation/feeding assistance”. The WVMI nurse neglected to contact the physician to clarify this statement in relation to rating the Claimant’s functional abilities.

- 9) The Claimant submitted documentation from Coordinating Council for Independent Living (C-3) after the hearing but within the timeframe allowed. This evidence shows a Client Contact Form completed on March 2, 2009 by the Case Manager RN which states in pertinent part:

Client is pleasant elderly lady, friendly and alert X 3. She is slow but steady in her gait, moves around the kitchen well. She states “she feels fine” lungs clear, heart S1 and S2, BP WNL, bowels moving, no

constipation, has trouble with urgency and frequency and dribbles some urine when she sneezes, wears Poise pads, wears glasses, is HOH had to repeat some questions but client alert and able to answer appropriately, c/o pain in hips has arthritis. She was drinking water, tries to drink 2 – 8oz glasses every day she states. Skin warm and dry no breakdown noted or reported.

9) 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.

10) 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.

11) 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.

- 12) Aged/Disabled Home and Community Based Waiver Policy Manual §501.3.4.D states that in those cases where there is a medical diagnosis question, the QIO RN will attempt to clarify the information with the referring physician. In the event that the RN cannot obtain the information, he/she will document such, noting that supporting documentation from the referring physician was not received.

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 properly sent the Claimant a Potential Denial Notice (D-3) on June 16, 2009. The Claimant submitted information from her physician (C-1) to the Department dated June 24, 2009. The physician clearly indicated the Claimant has some type of incontinence issue in this written note.
- 4) Policy also affords that when a medical diagnosis is in question, the RN will attempt to contact the physician in order to clarify the information. The WVMI nurse did not contact the physician to clarify a diagnosis of bladder incontinence. According to policy the WVMI nurse was obligated to follow up with the physician in an attempt to clarify this diagnosis.
- 5) The Claimant received four (4) deficits in June 2009 in conjunction with her Aged/Disabled Waiver Program reevaluation in the areas of bathing, grooming, dressing, and vacating a building.

- 6) The totality of the evidence is sufficient to show that the Claimant has bladder incontinence and she is therefore awarded one (1) deficit in this area, bringing her total deficits to five (5).
- 7) The required five (5) deficits have been established to meet 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 terminate the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The additional one (1) deficit awarded for Bladder 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 17th Day of November, 2009

**Cheryl Henson
State Hearing Officer**