



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

December 1, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 12, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Title XIX Aged and Disabled (HCB) 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 Sections 501]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Wavier Program.

The information which was submitted at your hearing revealed that you do 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 Reverse the proposal of the Department to terminate your benefits and services under the Aged and Disabled Waiver Program.

Sincerely,

Eric Phillips
State Hearing 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-1849

**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 1, 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 November 12, 2009 on a timely appeal, filed September 8, 2009.

It should be noted here that the claimant's benefits under the Aged and Disabled Waiver program continue at the previous level pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program is administered by the West Virginia Department of Health & Human Resources. The Aged and Disabled Waiver 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, Aged and Disabled Waiver services included Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportations, and RN Assessment and Review.

III. PARTICIPANTS:

-----, Claimant
-----, Case Manager CCIL
-----, RN WV Choice
-----, Direct Care Worker
Kay Ikerd, RN BoSS
B.J. Sides, RN WVMi

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

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to terminate the Claimants Aged and Disabled Waiver Program services.

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 Screen Form dated August 11, 2009
- D-3 Notice of Potential Denial dated August 12, 2009
- D-4 Notice of Denial dated August 27, 2009

VII. FINDINGS OF FACT:

- 1) On August 11, 2009, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for his continued eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, the Pre-Admission Screening Form.
- 2) On August 12, 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 documents:

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

and Disabled Home and Community Based Services Waiver, Policy and procedures Manual, Chapter 503.2.

Based on your PAS you have deficiencies in only 4 areas. Vacate a Building, Bathing, Continence, and Walking.

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

- 3) The Claimant was notified on August 27, 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. In part this notice documents the following:

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 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 additional deficits should be awarded in the areas of transferring, eating, and orientation.

Transferring-The Claimant stated that he uses an "Able Gator" to stand and transverse on his own without the use of his wheelchair. This device is a standing frame that uses metal rods connected to an individual's lower extremities and feet to help aid an individual with walking by the use of handgrips. The Claimant contended that he cannot transfer into this equipment on his own. He stated that he requires physical assistance to be secured in the device and it is necessary for him to be monitored while he operates the device as he can "pass out" while standing in the device. The Claimant indicated that he has operated this device daily for the past year and that he owned the device at the time of his PAS assessment.

The WVMi nurse indicated that at the time of the assessment the Claimant did not indicate that he utilized such a device. The nurse indicated that if the Claimant required physical assistance to transfer into the functional device, a deficit would have been awarded in the area of transferring.

The Claimant suffers from paralysis of the legs without sensation from the waist down. The "Able Gator" device allows the Claimant the ability to stand and ambulate without physical assistance. The Claimant requires physical assistance to help him stand and secure himself in

the device in question. Furthermore, the Claimant requires that he be monitored while he operates the device in the event he should faint. The Claimant testified that he utilizes such a device everyday; therefore a deficit **can be** awarded in the area of transferring.

Eating-The Claimant and his representatives contend that a deficit should be awarded in the area of eating. They state that the Claimants condition does not allow him to cook and prepare his own meals. The Claimant states that he is able to feed himself without assistance. The Department contended that a deficit cannot be awarded in the event that the individual cannot prepare his own meals. A deficit can solely be awarded in the event an individual has difficulty eating or swallowing and requires assistance.

The Claimant testified that he does not have any difficulties eating or swallowing; therefore a deficit **cannot** be awarded in the area of eating.

Orientation-The Claimant and his representatives contend that a deficit should be awarded in the area of orientation. The Claimant claims he needs reminders and has a loss of some short term memory. He specifically needs to be reminded of appointments and when to administer his medications. He states that he has some difficulties but does not require supervision on these aspects consistently. The Department purported that orientation is awarded in the event that an individual is disoriented on a regular basis and is unaware of person, place, or time.

The Claimant may need some reminders but is not completely disoriented on a consistent basis; therefore a deficit **cannot** be awarded in the area of orientation.

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, continence, and walking.
- 3) Testimony during the hearing revealed that a fifth deficit can be awarded in the area of transferring. Testimony presented in the areas of eating and orientation did not establish a deficit as set forth by policy therefore a deficit cannot be attributed to those areas.
- 4) The Claimant demonstrates five (5) qualifying deficits; therefore the Department was incorrect in its decision to terminate the Claimants benefits and services under the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to reverse the Department proposal to terminate the Claimants benefits and services under the Aged and Disabled 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 December 2009.

Eric L. Phillips
State Hearing Officer