



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Joe Manchin III  
Governor

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

August 18, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law for your hearing held on August 11, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your 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 reveals that your medical condition continues to require a sufficient number of services and the degree of care to medically qualify you for the Aged/Disabled Home and Community-Based Waiver Services Program.

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to terminate your benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

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

cc: Chairman, Board of Review  
Kay Ikerd, RN, BoSS

-----, [REDACTED]

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

-----,

**Claimant,**

v.

**Action Number: 10-BOR-1322**

**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 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 August 11, 2010 on a timely appeal filed May 17, 2010.

**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

-----, Case Manager (CM),

-----, RN,

-----, Homemaker,

Kay Ikerd, RN, BoSS (participated telephonically)

Sarah "Betsy" Carpenter, RN, WVMI (participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State 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 Claimant's benefits and services provided 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, Chapter 500, Section 501
- D-2 Pre-Admission Screening (PAS) for Aged/Disabled Waiver Services dated April 14, 2010
- D-3 Notice of Potential Denial dated April 15, 2010
- D-3a Additional information submitted on July 30, 2010
- D-4 Notice of Termination/Denial dated April 30, 2010
- D-5 Medical Necessity Evaluation Request dated March 3, 2010

**VII. FINDINGS OF FACT:**

- 1) On April 14, 2010, the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged/Disabled Waiver Services Program, hereinafter ADW Program [See Exhibit D-2, Pre-Admission Screening (PAS) completed on April 14, 2010].
- 2) On or about April 15, 2010, 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 4 areas – Vacate a Building, Bathing, Grooming and Continence.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination was made if received within two weeks. It should be noted that no additional information was received/reviewed within the two-week period.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated April 30, 2010 (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 4 areas – Vacate a Building, Bathing, Grooming and Continence.

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 four (4) deficits but indicated the medical assessment completed in April 2010 fails to identify five (5) functional deficits necessary to establish medical eligibility for participation in the ADW Program. In addition, the Claimant was provided an opportunity to submit additional medical documentation during the two-week period following the Potential Denial Notice (D-3), however, no information was submitted. The Department introduced Exhibit D-3a but objected to the contents being considered in this decision. Specifically, undated correspondence (received July 30, 2010) from Dr. [REDACTED] indicating the Claimant presents a diagnosis of multi-infarct dementia and that she is unable to lift her left arm after having a series of three strokes.
- 5) The Claimant contends that she remains medically eligible to participate in the ADW Program as she is demonstrating functional deficits in Eating and Dressing. According to the Claimant and her representatives, the Claimant has suffered three strokes resulting in a limited range of motion in her left arm as well as weakness and poor dexterity in her left hand.

The Claimant acknowledged that she told the Betsy Carpenter, RN, a nurse employed by West Virginia Medical Institute (WVMI), that she was independent with eating and dressing but indicated that she was embarrassed and did not want to look like an invalid. She reported that her homemaker must help her get dressed as she is unable to button, zip, or snap, and she cannot get her bra on because she is unable to lift her left arm or fasten. The Claimant further testified that she cannot cut some foods like meat or chicken, and that she relies on her homemaker or brother to cut her food.

██████████ RN, ██████████ contends that a proper range of motion assessment could not have been completed on the Claimant by the RN Carpenter. RN ██████████ testified that she has been working with the Claimant for a few years and she [Claimant] has never been able to raise her left arm/hand above her head. RN ██████████ testified that the Claimant has a limited range of motion with her left arm due to a history of three CVA's (cerebrovascular accident / stroke) as well as weakness and limited dexterity in her left hand. As a result, the Claimant cannot button, zip or snap, and she is unable get her bra on or get it fastened.

The Claimant's homemaker, -----, purported that she would have corrected some of the Claimant's statements but she and the Claimant's brother were not allowed to talk during the assessment. She stated that she knew the Claimant could not cut an apple but she was not allowed to speak. She further testified that she helps the Claimant get dressed daily.

The Claimant, RN ██████████ ----- and ----- testified that the Claimant can only lift her left arm above her head by interlocking her hands and lifting it with her right arm.

- 6) Betsy Carpenter, RN, WVMI, testified that she did not tell anyone they could not talk during the assessment as demonstrated by her documentation (D-2, Page 8 of 8) wherein she documented that -----reported "she checks her BP and her BS every day." RN Carpenter testified that she gave everyone in attendance an opportunity to speak at the conclusion of the assessment. RN Carpenter further indicated that she completed a thorough medical assessment on the Claimant and that the Claimant demonstrated the ability to raise both arms over her head.
- 7) The PAS (D-2) was reviewed for consistency and RN Carpenter's documentation notes on several occasions that the Claimant reported or demonstrated the strength and dexterity in her left hand to use her walker, transfer, open prescription bottles and even peel an apple. Upon consideration of the information provided to RN Carpenter, the assessment is correct and a deficit cannot be awarded in the area of eating.

The only area of the PAS where there is some degree of inconsistency is with regard to the Claimant's ability to groom. A deficit was awarded in this area because the Claimant reported she was unable to wash or style her hair, however, the reason why she is functionally unable to groom was not explained. While RN Carpenter may have had some reason beyond just the Claimant's statement, the Claimant's inability to wash her hair is consistent with an individual who is unable to reach her head with one of her hands. More importantly, credible testimony provided by the Claimant, RN ██████████ ----- and ----- indicates that the Claimant cannot dress herself due to complications with range of motion and strength in her left arm. Based on the evidence, the Claimant is demonstrating a functional deficit in dressing.

- 8) Aged/Disabled Home and Community-Based Services Manual Section 501 (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.

9) 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.

10) 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:  
(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) Evidence reveals that the Claimant was awarded four (4) deficits on a PAS completed by WVMI in April 2010 – Vacating a building, Bathing, Grooming and Continence.
- 3) Evidence submitted at the hearing indicates that the Claimant was demonstrating a deficit in dressing at the time of the assessment.
- 4) Whereas the Claimant was demonstrating five (5) program qualifying deficits, continued medical eligibility for participation in the Aged/Disabled Waiver Program is established.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to terminate the Claimant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_ Day of August, 2010.**

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