



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

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

February 18, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 4, 2009. Your hearing request was based on the Department of Health and Human Resources' termination of Medicaid Aged and Disabled Waiver (ADW) Program services based on a finding of medical ineligibility.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2).

The information submitted at your hearing revealed that the Department was correct in its assessment of four deficits and medical ineligibility for the ADW program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate benefits under the ADW Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd
Sarah Elizabeth Carpenter

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

-----,

Claimant,

v.

Action Number: 09-BOR-1443

**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 February 18, 2010 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 4, 2009 on a timely appeal, filed May 8, 2009.

All persons offering testimony were placed under oath.

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

-----, RN, Claimant's witness

-----, Claimant's witness

Sarah Elizabeth Carpenter, RN, West Virginia Medical Institute

Kay Ikerd, RN, Bureau of Senior Services

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its action to deny Aged and Disabled Waiver Program services to the Claimant based on a finding of medical ineligibility.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2
- D-2 Pre-Admission Screening (PAS) form, dated April 8, 2009
- D-3 Notice of potential denial dated April 9, 2009
- D-4 Additional information received April 22, 2009
- D-5 Notice of denial dated April 27, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant is a 58-year-old female recipient of Aged and Disabled Waiver (ADW) Services. Sarah Elizabeth Carpenter, a registered nurse with the West Virginia Medical Institute (WVMI), completed a pre-admission screening (PAS) assessment of the Claimant on April 8, 2009 (Exhibit D-2) to reevaluate medical eligibility for the program. The Department issued a potential denial notice (Exhibit D-3) on April 9, 2009. Ms. Carpenter received additional information (Exhibit D-4) related to the Claimant's medical eligibility on April 22, 2009. This information was reviewed and a denial notice (Exhibit D-5) was issued to the Claimant on April 27, 2009. Both the notice of potential denial and the notice of denial advised the Claimant that only four deficits were awarded, and that a minimum of five deficits are required for medical eligibility.

- 2) Kay Ikerd, representative for the Department’s Bureau of Senior Services, testified that the applicable policy for this proposed Department action is from the Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2 (Exhibit D-1), which states as follows:

501.3.2 MEDICAL CRITERIA

An individual must have five (5) deficits on the Pre-Admission Screening Form (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.

Section	Description of Deficits	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for 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.	

- 3) The WVMI nurse for the Department identified the four areas in which deficits were awarded from the April 8, 2009, PAS: *bathing, dressing, grooming, and vacating a building in the event of an emergency*. She testified that the additional information (Exhibit D-4), received after the potential denial notice to the Claimant, resulted in a change in the rated functional ability level for orientation and in an additional medical diagnosis; however, these changes did not result in a change in points used to determine medical eligibility.
- 4) The Claimant and her witnesses testified that they dispute the Department's PAS assessment findings in the following areas: *irrigations, parenteral fluids, eating, incontinence of bladder, and incontinence of bowel*.
- 5) -----, the Claimant's Homemaker RN, testified regarding *irrigations*, opining that flushing the Claimant's subcutaneous port qualifies her for a point in this area. Clarification from the Department asserted that this would not be evidence of irrigation, as, by policy, *irrigations* require a volume of fluid to be returned.
- 6) -----, the Claimant's Case Manager, testified that the Claimant has a j-tube, or jejunostomy tube, to administer *parenteral fluids*. She testified that the Claimant did not have this at the time of the PAS. Ms. Ikerd testified that the assessing nurse could only evaluate the Claimant based on her circumstances at the time.
- 7) The Claimant testified regarding the functional area of *eating*. She testified that she is unable to prepare meals. Ms. Ikerd explained that meal preparation is not considered part of *eating*.
- 8) The Claimant testified that she has *incontinence of bladder* and *incontinence of bowel*. She testified that, at the time of the PAS, she did not have this problem, but that she has since had problems with diarrhea. Notes from the PAS completed by the evaluating RN (Exhibit D-2, page 7) relay the reported frequency of incontinence episodes as two in the prior week for bowel incontinence, and none in the prior week for bladder incontinence. Testimony from Ms. Carpenter indicated that she classified both of these areas as level 2 – or “occasionally incontinent” – instead of level 3 – or “incontinent” – because the frequency of reported episodes at the time of the PAS was less than three per week.

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for the ADW Program services. The WVMi nurse determined, at the time of the PAS, that the Claimant had four qualifying deficits. The areas of eating and irrigations could not be awarded, as the meanings of these areas as proposed on the Claimant's behalf did not match the policy definitions. Eating, as a functional ability, is not intended to include meal preparation, and irrigations require a volume of fluid returned. The areas of *parenteral fluids*, *incontinence of bladder*, and *incontinence of bowel* were presented in terms of changes since the PAS, not conditions at the time of that assessment. Incontinence, as described at the time of the PAS, met the policy standard of occasional incontinence. Testimony also clearly established that the j-tube for administering nutrition to the Claimant was implanted after the PAS. These areas were assessed correctly at the time by the Department.
- 2) With only four deficits, medical eligibility could not be established, and the decision of the Department to terminate ADW services is correct.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of February 2010.

Todd Thornton
State Hearing Officer