



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26555

Joe Manchin III  
Governor

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

September 9, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 1, 2010. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through the Medicaid Aged and 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 fails to demonstrate that you require a sufficient number of services and the degree of care to medically qualify you for the Aged/Disabled Home & Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your application for benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI

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

-----,

**Claimant,**

v.

**Action Number: 10-BOR-1527**

**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 September 1, 2010 on a timely appeal filed June 28, 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

-----, Homemaker, [REDACTED]

-----, RN, [REDACTED]

Kay Ikerd, RN, Bureau of Senior Services (BoSS) (Participated telephonically)

Debra Lemasters, RN, West Virginia Medical Institute (WVMI) (Participate 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 action to deny the Claimant's application for benefits and services 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 Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed on May 25, 2010
- D-3 Notice of Potential Denial dated June 1, 2010
- D-3a Additional information requested/received from Dr. [REDACTED] (May 27, 2010)
- D-4 Notice of Termination/Denial dated June 17, 2010

**VII. FINDINGS OF FACT:**

- 1) On May 25, 2010, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged/Disabled Waiver Services Program, hereinafter ADW Program (Exhibit D-2, Pre-Admission Screening (PAS) form).
- 2) On or about June 1, 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 3 areas – Vacating a Building, Bathing and Grooming.

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

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated June 17, 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 3 areas – Vacate a Building, Bathing and Grooming.

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 three (3) deficits but indicated the medical assessment completed in May 2010 fails to identify five (5) functional deficits as required by ADW medical eligibility policy. The Department noted Exhibit D-3a verifies that a diagnosis of pain was confirmed by the Claimant's physician following a confirmation request of diagnosis/symptoms from Debra Lemasters, RN, WVMI.
- 5) The Claimant and his representatives contend that the Claimant should have been found medically eligible as he is also demonstrating a functional deficit in **Medication Administration, Transferring and Walking**.

**Medication Administration** – The Claimant was assessed as requiring prompting and supervision with medication administration as RN Lemasters testified the Claimant reported he takes his medications out of the pill bottle and places them in three different bottles to separate morning, afternoon and evening doses. RN Lemasters noted that the Claimant reported he then removes the medication and places it in his mouth, as needed. Because the Claimant reported difficulty with reading the prescription bottle labels, RN Lemasters assessed the Claimant as requiring prompting/supervision. However, individuals who qualify for a deficit in this area would require that their medications be placed in their mouth, tube, eyes, etc... The Claimant indicated that his vision has deteriorated but acknowledged he could administer his own medications at the time of the assessment. Based on the evidence, the Claimant does not qualify for a deficit in medication administration.

**Walking** – Policy dictates that a deficit can only be awarded in walking if the individual is assessed at a level 3 or higher (requires physical assistance) in walking. The Claimant acknowledged that he was ambulating in his residence at the time of the assessment with the assistance of his walker but indicated his ability has deteriorated. RN Lemasters testified that the Claimant ambulated across the room and back during her visit with no loss of balance and the Claimant denied any falls at the time of the assessment. While testimony received at the hearing appears to indicate the Claimant’s physical health has deteriorated since the May 2010 assessment, there is insufficient evidence to indicate the Claimant is demonstrating a deficit in walking.

**Transferring** – In order to qualify for a deficit in transferring, policy indicates that the individual must require hands-on physical assistance to transfer – the individual would be physically unable to transfer without a person there to assist them. RN Lemasters testified that the Claimant reported using the mattress and his walker for support to transfer in-and-out of bed and he uses a cabinet to assist him with transfers on-and-off of his high commode. RN Lemasters witnessed the Claimant used the armrest of his chair for support to transfer on-and-off his recliner chair and no loss of balances was noted. RN ----- purported that the Claimant has fallen on two occasions since the medical assessment was completed and that he cannot transfer without the assistance of his walker. There were no falls reported during the assessment and the Claimant reported and/or demonstrated the ability to transfer without physical assistance. As a result, a deficit cannot be awarded in transferring.

6) 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.

7) 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.

8) 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) 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) The evidence reveals that the Claimant was awarded four (4) deficits on a PAS completed by WVMI in February 2010 – Vacate a Building, Bathing and Grooming.
- 3) The evidence submitted at the hearing fails to confirm that the Claimant was demonstrating any additional deficits when the assessment was completed in May 2010.
- 4) Whereas the Claimant demonstrated only three (3) program qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Claimant's application for benefits and services through the Medicaid, Aged/Disabled, Title XIX (HCB) 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 September, 2010.**

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