



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 East Third Avenue

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Joe Manchin III  
Governor

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

April 14, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 18, 2010. 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 do not meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to deny your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Kay Ikerd, RN, WV Bureau of Senior Services

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

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**Claimant,**

v.

**Action Number: 09-BOR-1806**

**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 March 18, 2010 on a timely appeal filed August 31, 2009.

**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

-----, [REDACTED] Claimant's representative

-----, WV's Choice, Claimant's witness

-----, WV's Choice, Claimant's witness

Kay Ikerd, RN, Bureau of Senior Services

Michelle Wiley, RN, West Virginia Medical Institute, Department witness

All parties participated by conference call.

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearings Officer swore in all parties at the beginning of the hearing.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its proposal to terminate Claimant's benefits under the Aged and Disabled Home and Community-Based Waiver Program.

**V. APPLICABLE POLICY:**

Aged and 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
- D-2 Pre-Admission Screening (PAS) assessment completed August 6, 2009
- D-3 Notice of Potential Denial dated August 7, 2009
- D-4 Notice of Denial dated August 24, 2009

**VII. FINDINGS OF FACT:**

- 1) The Claimant underwent a yearly medical evaluation review for the Title XIX Aged and Disabled Waiver Program during the months of June through August 2009.
- 2) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 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: (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) Department's witness completed a PAS (Exhibit D-2) on August 6, 2009 in the Claimant's home and determined that she did not meet the medical eligibility criteria for the program. The nurse testified that the Claimant received three (3) deficits on the PAS assessment in the areas of grooming, dressing and continence.
- 4) The Department sent the Claimant's Case Management Agency, [REDACTED] a Notice of Potential Denial (Exhibit D-3) on August 7, 2009. The form explained that if the Claimant or her representatives believed there was additional information regarding her medical condition that was not considered, it should be submitted within the next two weeks to WVM. Neither Claimant nor her Case Management Agency submitted further medical information.
- 5) The Department sent the Claimant a Notice of Denial (Exhibit D-4) dated August 24, 2009. The notice was addressed to ----- and mailed to the Claimant at [REDACTED]
- 6) The Claimant and her representative contended during the hearing that additional deficits should be awarded in the areas of bathing and vacating a building.
- 7) **Bathing** is addressed within the area of the PAS listed as Functional Abilities, which includes instructions to "indicate the individual's functional ability in the home for each item listed therein." The WVM nurse rated the Claimant as "self/prompting" meaning she is capable of performing this activity alone or with prompting. The nurse recorded the following on the PAS:

[Claimant] says that she holds to things to get in/out of the shower. She does not have a shower chair. She says that she cannot sit down in the tub, has to stand up to shower. She says that she can bathe herself and [home-maker] does not have to assist with this. I asked if she was able to wash her back and feet. She said that she could do this herself. She says that she has a long-handled sponge that she uses to wash her back and feet. Was assessed as being able to bathe independently.

Claimant testified that she sometimes falls in the bathroom when attempting to take a bath. Claimant's representative asked her why she did not correct the nurse evaluator when she was reviewing the PAS results in this area. Claimant responded that it was embarrassing for her to admit that she could not take a bath or shower without assistance.

- 8) *Vacating a building* is addressed within the PAS, but is listed separately from Functional Abilities. The PAS instructs the reviewer to assess an applicant's ability to vacate his or her residence in the event of an emergency. The WVMi nurse rated the Claimant as "with supervision" and awarded Claimant no deficit. The nurse recorded the following pertinent information on the PAS:

[Claimant] lives on the 6<sup>th</sup> floor of a high rise apartment building. Lives alone. She sleeps in the only bedroom of the apartment, but at times sleeps on the on the couch if "my breathing is bad." There is only one exit door in the apartment. She says that if the elevator was out and she had to walk down six flights of stairs, she does not know if she could vacate. Says that it would take her some time to get down the steps because she becomes short of breath. She does use oxygen at night. Based on her ability to stand and walk today, [Claimant] was assessed as requiring supervision with vacating.

Claimant's representative asked Department's witness how she came to the conclusion that Claimant could not vacate a building. Department's witness responded that she based this assessment upon what she observed in Claimant's home on the day she completed the PAS. She stated that Claimant told her she was having a fair day, and Claimant's witness documented that on the PAS. She testified that Claimant was not using oxygen on that day, and based on Claimant's ability to stand up and walk, she determined Claimant was able to vacate her apartment building.

- 9) Department's witness testified that she reviewed all of the areas from the PAS where she did or did not award deficits, with Claimant and Claimant's home-maker. She further testified that neither Claimant nor home-maker disagreed with anything the witness reviewed with them that day.

### **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 Program.
- 2) The Department properly notified the Claimant by sending a Potential Denial Notice to Claimant's Case Management Agency on August 7, 2009. The Case Management Agency failed to provide the Department with additional information during the two week timeframe awarded her in the Potential Denial Notice (Exhibit D-3).
- 3) The Department was correct in not giving Claimant a deficit in the area of vacating a building. Department's witness based her decision on her observations as to Claimant's ability to ambulate at the time of the PAS. Claimant stated on the PAS that she did not know if she could vacate; she did not say that she could not vacate. Also, when Department's witness reviewed the PAS with Claimant and her home-maker, neither of them questioned this finding on the assessment.
- 4) The Department was correct in not giving Claimant a deficit in the functional area of bathing. Claimant told Department's witness during the PAS that she was able to shower, and had made allowances for those parts of her body that she was not able to reach easily. Given the opportunity to challenge this portion of her evaluation, Claimant did not do so. In testimony,

neither Claimant nor her representative offered any substantial testimony to support their assertion that a deficit should have been awarded in this functional area.

- 5) Claimant received three (3) deficits in August 2009 in conjunction with her Aged/Disabled Waiver Program medical eligibility review in the areas of dressing, grooming and continence. Neither Claimant nor her representatives were able to offer substantive evidence that would result in Claimant receiving more deficits than these.
- 6) The required five (5) deficits have not 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 **uphold** the Agency's proposal to deny the Claimant's medical eligibility under the 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 14<sup>th</sup> Day of April, 2010.**

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**Stephen M. Baisden  
State Hearing Officer**