



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Joe Manchin III
Governor

Board of Review
P.O. Box 1736
Romney, WV 26757

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

January 11, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 7, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to deny your Medicaid Eligibility under the 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 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 chose the waiver program as a means to remain in their home where services can be provided [Aged/Disabled (HCB) Services Manual Section 501]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver Program.

The information which was submitted at your hearing revealed that you did not have the required number of deficits to be approved for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your application for the Aged and Disabled Waiver Program.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 09-BOR-1808

**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 January 11, 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 January 7, 2010 on a timely appeal filed August 27, 2010.

It should be noted here that the hearing was originally scheduled for November 10, 2010. The Claimant failed to appear and subsequently established good cause resulting in the hearing being rescheduled.

II. PROGRAM PURPOSE:

The Program entitled the Aged and Disabled Waiver program is administered by the West Virginia Department of Health & Human Resources. 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

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

Kay Ikerd, RN, BoSS

Barbara Plum, 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 denial of the Claimant's application for the Aged and Disabled Waiver Program.

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 Screening Form dated June 29, 2009
- D-3 Potential Denial of Services dated July 20, 2009
- D-4 Additional Information from [REDACTED] M.D. dated July 29, 2009
- D-5 Notice of Denial dated August 10, 2009

I. FINDINGS OF FACT:

- 1) On June 29, 2009, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for her eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, Pre-Admission Screening Form (PAS)
- 2) On July 20, 2009, the Claimant was notified by Exhibit D-3, Notice of Potential Denial, that she 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/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 503.2

Based on your PAS you have deficiencies in only 3 areas. Bathing, Grooming, and Dressing.

This notice allowed the Claimant to submit additional information regarding her medical condition to WVMI with a two week timeframe.

- 3) On July 29, 2009, [REDACTED] M.D. submitted additional information for the WVMI nurse for review. Exhibit D-3, Additional Information from [REDACTED] M.D, documents in pertinent part:

Due to -----'s chronic back pain, she relies on her sister to assist in bathing and grooming (transfer to and from bathtub)

It shall be noted that the Claimant had received deficits in the areas in which additional information was submitted for review by the WVMH assessing nurse.

- 4) The Claimant was notified on August 10, 2009, via Exhibit D-5, Notice of Denial, that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. 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 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 bathing, grooming, and dressing.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 5) The Claimant and her representative contend that additional deficits should have been awarded in the areas of walking, transferring, and orientation.

Walking-The Claimant stated that she has had severe back pain for the last twenty years and has had three prior surgical procedures. She testified that she is in consistent pain at all hours of the day and the severity of the pain is contingent on her daily activities. The Claimant purported that her legs "give out" on her and she suffers from falls. The Claimant indicated that she uses a cane to ambulate and utilizes motorized wheeling devices when she is outside of her home. The assessing nurse documented in the PAS assessment that the Claimant walked in the home without difficulty and held on to furniture as needed to ambulate in her surroundings. The assessing nurse testified that while the Claimant was standing she held on to door jams for stability.

The Claimant was assessed as a Level II, supervised assistive device as she aides herself with furniture to ambulate. The Claimant did not require hands on physical assistance while walking during the assessment; therefore a deficit **cannot** be awarded in the area of walking.

Transferring-The Claimant's representative stated that when the Claimant is having a "bad day" with her health issues she is unable to transfer out of a seated position. The assessing nurse testified that the Claimant's sister was present during the assessment and the Claimant did not require assistance from her sister when transferring during the assessment. The assessing nurse documents in her assessment that the Claimant transferred many times without difficulty during the evaluation.

The Claimant was assessed as a Level II, supervised assistive device as she aides herself with furniture or fixtures when transferring. In order for a deficit to be awarded in the contested area, the Claimant would need to be rated as a Level III, requiring hands on assistance. During the assessment the Claimant did not require additional assistance when transferring; therefore a deficit **cannot** be awarded in the area of transferring.

Orientation-The Claimant's representative testified that the Claimant suffers from intermittent disorientation and suffers from a loss of short term memory. The Claimant stated that her blood sugar is not under control and at times she may pass out. The assessing nurse testified that the Claimant made her aware of her blood sugar condition during the evaluation but the Claimant was alert and oriented to person, place and time during the assessment.

In order to qualify for a deficit in the area of orientation, an individual must be totally disorientated to person, place, and time. During the assessment the Claimant did not exhibit any disorientation therefore a deficit **cannot** be awarded in the area of orientation.

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) 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 Assessment (PAS).
- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the areas of bathing, grooming, and dressing.
- 3) Evidence presented during the hearing did not establish any additional deficits to the Claimant and her total number of deficits awarded remain at three (3).
- 4) The Claimant demonstrates three (3) qualifying deficits; therefore the Department was correct in its decision to terminate medical eligibility under the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to deny the Claimants applications for 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 January 2009.

**Eric L. Phillips
State Hearing Officer**