



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Joe Manchin III
Governor

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

May 7, 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' 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

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

-----,

Claimant,

v.

Action Number: 09-BOR-2054

**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 January 7, 2010 on a timely appeal filed October 6, 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

-----, Claimant's witness

Kay Ikerd, RN, WV Bureau of Senior Services

Debra Lemasters, RN, West Virginia Medical Institute, Department's witness

All parties participated by telephone conference call.

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

The Hearings Officer placed all participants under oath 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 14, 2009
- D-3 Notice of Potential Denial dated August 18, 2009
- D-4 Notice of Denial dated September 2, 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 14, 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 physician, [REDACTED] MD, of [REDACTED] a Notice of Potential Denial (Exhibit D-3) on August 18, 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 WVMI. Neither Claimant nor her Physician submitted further medical information.
- 5) The Department sent the Claimant a Notice of Denial (Exhibit D-4) dated September 2, 2009. The notice was addressed to Claimant and mailed to -----, -----.
- 6) The Claimant and her representative contended during the hearing that additional deficits should be awarded in the areas of transferring and administering medications.
- 7) **Transferring** is addressed within the area of the PAS listed as Functional Abilities (Item #26), which includes instructions to "indicate the individual's functional ability in the home for each item listed therein." The WVMI nurse rated the Claimant at a Level 2, "supervised/assistive device" meaning she is capable of performing this activity with someone observing or with aids such as furniture, walls or a walker for support. The nurse recorded the following on the PAS:

At visit [Claimant] placed hands on armrest of chair for support to transfer on and off chair . . . No loss of balance was noted. [Reviewer] noted after transfer she independently lifted her legs and curled them up on the chair cushion beside her. She stated she uses grab bar that is on the wall beside the commode to assist her to transfer on and off of commode. She stated she can transfer out of bed using mattress for support . . . but stated her husband has to lift her legs up into the bed for she cannot lift them high enough to place in bed herself . . . She stated she lifts her legs out of bed herself.

Claimant's witness testified that when Claimant walks across the floor, her balance is very bad. She has to hold on to chairs and other furniture to keep from falling down. Department's witness responded that in order to award a deficit for transferring, she would

require physical assistance in order to stand up or sit/lie down. She stated that someone would have to go to her and support her to get her up out of a chair or bed because she could not do this by herself.

- 8) *Administering medications* is addressed within the PAS, but is listed separately from Functional Abilities. The PAS instructs the reviewer to assess an applicant's ability to administer his or her own medications. The WVMi nurse rated the Claimant as "With prompting/supervision" and awarded Claimant no deficit. The nurse recorded the following pertinent information on the PAS:

[Claimant] stated she takes her medication out of pill bottle and places in her mouth herself but stated she forgets to take her medication.
[Reviewer] noted impaired short-term memory.

Claimant testified that she needs help in all areas of medication administration, in sorting her medicines, getting the pills out of the bottles, and in giving herself the proper dosage at the proper time. Claimant further testified that she was able to pick up her pills and place them in her mouth. Department's witness replied that in order to receive a deficit in administering medications, the Claimant would have to not be able to put the medications in her mouth by herself. Department's representative added that it is not enough for a deficit if someone has to sort out Claimant's medications, put them in a container, and remind Claimant to take them. That falls under supervision, but needing supervision is not enough to establish a deficit.

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. No additional information was provided during the two-week timeframe awarded Claimant in the Potential Denial Notice which was sent to her physician on August 18, 2009. (Exhibit D-3).
- 3) The Department was correct in not giving Claimant a deficit in the functional area of transferring. Department's witness based her decision on her observations as to Claimant's transferring ability at the time the PAS was conducted. Claimant was observed getting into and out of chairs and testified that she could get into and out of bed with minimal assistance. Claimant's witness testified to Claimant's walking ability but offered no substantial testimony to support awarding a deficit for transferring.
- 4) The Department was correct in not awarding Claimant a deficit in the area of administering medications. Department's witness reported on the PAS that Claimant was able to pick up her pills and put them in her mouth. Claimant reiterated this statement during the hearing. Department's representative pointed out that sorting medications, placing them in a container of some type, and prompting Claimant to take them was a function of supervision. The Reviewer had assessed Claimant as "With prompting/supervision" on the PAS. Neither Claimant nor her representative offered any substantial testimony to support their assertion that a deficit should have been awarded in this 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 bathing, 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 7th Day of May, 2010.

**Stephen M. Baisden
State Hearing Officer**