



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

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

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D
Cabinet Secretary

December 8, 2010

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 7, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate 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 (HCB) Title XIX Waiver Services 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 chosen 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 do not meet the medical eligibility requirements for the Aged and Disabled Waiver program.

It is the decision of the State Hearing Officer to Uphold the action of the Department to terminate your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, BoSS

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

-----,

Claimant,

v.

Action Number: 10-BOR-2105

**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 December 7, 2010 on a timely appeal, filed September 15, 2010.

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

II. PROGRAM PURPOSE:

The program entitled Aged and Disabled Waiver (ADW) 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

-----, RN Case Manager, [REDACTED]

Cathy Zuspan, RN, Bureau of Senior Services (BoSS)

Barbara Plum, RN, West Virginia Medical Institute

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 is correct in its proposal to terminate the Claimant's eligibility for benefits and services under 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 Assessment dated August 31, 2010
- D-3 Notice of Potential Denial dated September 2, 2010
- D-4 Notice of Denial dated September 17, 2010

Claimants' Exhibits:

- C-1 Letter from -----, Homemaker RN, [REDACTED] dated November 24, 2010
- C-2 Letter from [REDACTED] M.D., dated November 23, 2010
- C-3 Letter from ----- dated November 8, 2010

VII. FINDINGS OF FACT:

- 1) On August 31, 2010, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for her continued eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. Barbara Plum, WVMI assessing nurse testified that the assessment was completed with the Claimant. During the assessment, Ms. Plum identified the Claimant's deficits as vacating during an emergency, eating, and grooming.
- 3) On September 9, 2010, the Claimant was issued Exhibit D-3, Notice of Potential Denial. This exhibit documents in pertinent part:

At your request, a WVMI nurse recently visited you and completed an assessment to determine medical necessity for Medicaid's Aged and Disabled Waiver Program.

Medical necessity is based on information you provided to the nurse, which was documented on a form called the Pre-Admission Screening Form or PAS.

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, Vacate a Building, Eating, and Grooming.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding her medical condition to WVMi within a two week timeframe from the date of the issuance of such notice.

- 4) On September 17, 2010, the Claimant was issued Exhibit D-4, Notice of Denial, informing her that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents 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 3 areas-Vacate a Building, Eating, and Grooming.

- 5) -----, the Claimant's RN, Case Manager from [REDACTED] testified that additional deficits should have been awarded in the areas of bathing, walking, and medication administration.

The following addresses the contested areas:

Bathing-----indicated that the Claimant requires assistance in the area of bathing. ----- indicated that the Claimant believes she is independent with her bathing and overstated her abilities in the contested area. -----purported that the Claimant requires assistance bathing her back and feet. The Claimant indicated that the homemaker aide assists her with her shower and that this information was not related during the assessment. Ms. Plum documented in Exhibit D-2 that the Claimant has a bathtub/shower with no "grab bars" and that the Claimant "put hand on the wall to get in [the bathtub] and puts hand on the sink to get out of the shower." Ms. Plum noted that the Claimant reported that she could wash her feet and demonstrated washing her back at the assessment. Additionally, the Claimant reported that she does not require assistance from the homemaker aide in the area of bathing.

Testimony indicates that the Claimant requires assistance in the area of bathing, however, at the assessment the Claimant indicated that she could wash her feet and demonstrated her abilities

without difficulty. Policy requires that a deficit can only be awarded in bathing if the individual is assessed at a level 3 or higher (requires physical assistance). The Claimant did not indicate any barriers in the area to the assessing nurse and demonstrated her abilities without difficulty during the assessment; therefore, an additional deficit **cannot** be awarded in the contested area.

Walking-----testified that the Claimant gets “giddy-headed” or experiences vertigo when she ambulates. -----indicated that the Claimant requires supervision getting in and out of her apartment. Ms. Plum noted in Exhibit D-2 that the Claimant did not require a cane or walker and the Claimant “walked in the home without difficulty.” Additionally, Exhibit D-2 indicated that the Claimant “holds onto the railing to get up and down her stairs” and that the Claimant indicated that she did not require physical assistance to walk down her stairs.

During the assessment, the Claimant reported that she could ambulate in her home without difficulty. Testimony indicated that the Claimant requires supervision when exiting and returning to her home, however, the assessment is based on the Claimant’s functional abilities in the home. Policy requires that a deficit can only be awarded in walking if the individual is assessed at a level 3 or higher (requires physical assistance). The evidence submitted fails to meet policy requirements; therefore, a deficit cannot be awarded in the contested area.

Medication Administration-----stated that the Claimant has lymphedema and requires a medical sleeve to be placed on her arm in which she requires assistance administering the sleeve on her arm. -----testified that the Claimant cannot open prescription bottles unless she has a special bottle and requires reminders to take her medications. The Claimant stated that she could “sort of” open prescription bottles with difficulty during the assessment. Ms. Plum noted in Exhibit D-2 that the Claimant does forget to take her medication but she possesses the ability to take her medications. Ms. Plum stated that prompting and supervision does not necessitate a deficit in the contested area.

During the assessment, the Claimant reported that she utilized a sleeve on her left arm for lymphedema, but did not indicate any difficulties placing the sleeve on her arm. The Claimant indicated that she could ingest her medications and required prompting in the contested area. Prompting and supervision, however, does not qualify for a deficit as policy requires that medications must be placed in the individual’s mouth, tube, eyes, etc..., in order to qualify for a deficit; therefore, an additional deficit **cannot** be awarded in the contested area.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (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:
 - (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) 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 vacating, eating, and grooming.

- 3) Evidence presented during the hearing did not establish any additional functional deficits. The Claimant's total number of deficits awarded is three.
- 4) The Claimant demonstrates three qualifying deficits; therefore, the Department was correct in its decision to deny the Claimant's medical eligibility under the Aged and Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing officer to **uphold** the decision of the Department to terminate the Claimant's medical eligibility 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 December 2010.

**Eric L. Phillips
State Hearing Officer**