



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

Earl Ray Tomblin
Governor

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

December 9, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 30, 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 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 that 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 for participation in 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-2111

**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 November 30, 2010 on a timely appeal filed September 22, 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

-----, Claimant's sister/witness

Angel Khosa, LSW, Bureau of Senior Services (BoSS)

Debra Lemasters, RN, West Virginia Medical Institute (WVMI)

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 August 13, 2010
- D-3 Notice of Potential Denial dated August 17, 2010
- D-4 Notice of Termination/Denial dated September 7, 2010

Claimant's Exhibits:

- C-1 Verification of 60% service connected disability
- C-2 A list of medical conditions that are not related to military service

VII. FINDINGS OF FACT:

- 1) On August 13, 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 August 17, 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 2 areas – Grooming and Continence.

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.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated September 7, 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 2 areas – Grooming and Continence.

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 two (2) deficits but indicated the medical assessment completed in August 2010 fails to identify five (5) functional deficits as required by ADW medical eligibility policy.
- 5) The Claimant contends that he should have been found medically eligible as he is also demonstrating a functional deficit in **vacating, medication administration, dressing and bathing**. The Claimant submitted Exhibits C-1 and C-2 to show that he has several medical conditions and that he receives Veteran's Benefits based on a 60% service connected disability. The following includes a finding specific to each of the contested areas:

Vacating – The Claimant testified that he is on oxygen at night and that he has to use inhalers and take breathing treatments throughout the day. He has a diagnosis of COPD and he gets short of breath easily. He reported that he has 6 or 8 steps he must go down to vacate and there have been times when he did not go and get his mail because he was concerned he would not be able to make it back to his home. Debra Lemasters, RN, WVMI testified that the Claimant reported during the assessment that he could vacate in the event of an emergency without assistance. RN Lemasters noted that he still drives his vehicle, indicating he can exit for routine trips out of his home, and he demonstrated the ability to ambulate independently with no loss of balance. While the Claimant's breathing difficulties are noted, there is insufficient evidence to indicate he would be unable to vacate in the event of an emergency.

Medication administration – The Claimant indicated that he needs assistance with medication administration because he "sometimes" forgets to take his medications. RN Lemasters testified that a deficit can only be awarded in medication administration if the individual is unable to place their medication in their mouth, eye, or tube. The Claimant reported during the assessment that he is able to remove his medications from the bottle and place them in his mouth. The Claimant's inability to remember to take his medications qualifies as "prompting and supervision" and while this can present complications, it does not qualify as a deficit.

Dressing – In order to establish a skilled deficit in dressing, the individual must demonstrate the need for hands-on physical assistance (In the absence of physical assistance by at least one person, the individual would be otherwise unable to get dressed). The Claimant testified that he gets dressed slowly and that it is difficult to put on socks because he gets short of breath. The Claimant’s testimony is consistent with the documentation found on the PAS assessment completed by RN Lemasters. While getting dressed is challenging for the Claimant, the evidence fails to demonstrate he requires physical assistance. As a result, the Claimant was properly assessed in the area of dressing (self/prompting) and a deficit cannot be awarded.

Bathing – The Claimant purported that he demonstrates a deficit in bathing because he gets out of breath sometimes when he get in and out of the tub. RN Lemasters testified that the Claimant is able to steady himself with the wall when getting in and out of the shower. He has a tub with a handheld shower and shower chair. RN Lemasters noted that the Claimant reported during the assessment that he is able to wash all areas and demonstrated how he lifts his legs and reaches down to his feet to wash. He indicated that some days he is short of breath and he cannot tolerate a shower until later in the day when his dyspnea (shortness of breath) has improved. The Claimant reported to RN Lemasters that he prefers to have someone in his home when he showers for safety reasons but he denied any falls. In order to qualify for a deficit in bathing, the individual must require hands-on physical assistance by another person with washing and/or transferring in and out of the tub/shower and the evidence fails to indicate the Claimant requires this level of assistance. Based on the evidence, a deficit cannot be established in bathing.

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. This is the same level of care required to qualify medically for nursing home services.
- 2) The evidence reveals that the Claimant was awarded two (2) deficits on a PAS completed by WVMi in August 2010 – Grooming and Continence.
- 3) The evidence submitted at the hearing fails to confirm that the Claimant was demonstrating any additional deficits when the assessment was completed.

- 4) Whereas the Claimant demonstrated only two (2) 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 December, 2010.

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