



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

February 12, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 10, 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 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 have the required amount of deficits to be eligible 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 the Claimant's application for the Aged and Disabled Waiver Program.

Sincerely,

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

cc: Chairman, Board of Review
Kay Ikerd, BoSS

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

-----,

Claimant,

v.

Action Number: 09-BOR-2247

**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 February 12, 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 February 10, 2010 on a timely appeal, filed November 18, 2009.

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
Kay Ikerd, RN, BoSS
Paula Clark, 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-Coverd Services, Limitations, and Exclusions for Aged and Disabled Waiver Services.
- D-2 Pre-Admission Screening Assessment dated October 29, 2009
- D-3 Notice of Potential Denial dated October 30, 2009
- D-4 Notice of Denial dated November 16, 2009

VII. FINDINGS OF FACT:

- 1) On October 29, 2009, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for his eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, Pre-Admission Screening Assessment.
- 2) On October 30, 2009, the Claimant was notified by Exhibit D-3, Notice of Potential Denial that he 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 4 areas. Vacate a Building, Bathing, Grooming, Continence.

This notice allowed the Claimant to submit additional information regarding his medical conditions to WVMI within a two week timeframe.

- 3) On November 16, 2009 the Claimant was notified by Exhibit D-4, 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 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 areas of Vacating a Building, Bathing, Grooming, Continence.

- 4) The Claimant contended that additional deficits should have been awarded in the areas of walking and dressing.

Walking-The Claimant stated that he experiences difficulties in the life area of walking. He indicated that he is unable to walk a straight line and he has experienced difficulties in walking since he was a young child. The assessing nurse testified that she observed the Claimant's ability to ambulate in his surroundings and that the Claimant did not require the assistance of any assistive device, such as a walker or cane. The assessing nurse testified that the Claimant did not require any assistance from other individuals to ambulate on the day of the assessment.

During the PAS assessment, the Claimant was assessed as independent in his ability to walk. The Claimant did not require the assistance of furniture or walls to aide in his ambulation and does not require the use of a cane or walker. The Claimant does not require "hands on" physical assistance from other individuals while walking therefore the assessing nurse was correct in her evaluation of the Claimant in the area of walking. A deficit **cannot** be awarded in the contested area.

Dressing- Testimony from the Claimant indicated that a deficit should be awarded in the area of dressing, as he experiences difficulties in putting on his winter clothing. The Claimant stated that most of his winter clothing consists of pullover shirts and that he has difficulties in pulling his shirts down over his torso. The assessing nurse stated that Claimant reported at the assessment that he is able to put his shirt on himself and was able to button his clothing. The Claimant indicated that he could put his arms through his sleeves but stated that he did have some troubles getting his shirt pulled down over his torso. The PAS Assessment, Exhibit D-2, documents that the nurse recorded the Claimant's problems in dressing and that the Claimant reported that difficulties in pulling his shirts down were occasional and that he did not experience these difficulties on a consistent basis.

The Claimant was assessed as a Level I, Self/Prompting, in his ability to dress himself. The Claimant possesses the ability to dress himself depending on the type of clothing that he chooses to wear. During the assessment, the Claimant indicated that he experiences problems in pulling his shirts down, but his problems were occasional in nature. Testimony from the Claimant indicated the need for situational assistance based on the type of clothing the Claimant utilized on a particular day. The Claimant does not require consistent assistance in the area of dressing; therefore a deficit **cannot** be awarded in the contested area.

- 5) 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

6) 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 ADW 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.

7) 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 vacating a building, bathing, grooming, and continence.
- 3) Evidence presented during the hearing established no additional deficits to the Claimant. The total numbers of deficits awarded to the Claimant stand at four (4).
- 4) The claimant demonstrates four (4) qualifying deficits; therefore the Department was correct in its decision to deny 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 Claimant's application 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 February 2010.

**Eric L. Phillips
State Hearing Officer**