



**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**

June 6, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 2, 2011. Your hearing request was based on the Department of Health and Human Resources' decision 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 proposal 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, Bureau of Senior Services

-----, [REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1018

**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 a timely appeal, filed March 31, 2011.

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 Aged and Disabled Waiver program, hereinafter ADW, 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

-----, RN Case Manager

Kay Ikerd, RN Bureau of Senior Services (BoSS)

Debbie Sickles, 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 medical 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 dated March 21, 2011
- D-3 Notice of Potential Denial dated March 22, 2011
- D-4 Notice of Decision dated April 15, 2011

Claimants' Exhibits:

- C-1 Progress Notes from [REDACTED] M.D.
- C-2 Telephone Encounter Note from [REDACTED] M.D.

VII. FINDINGS OF FACT:

- 1) On March 21, 2011, 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. Debbie Sickles, WVMI assessing nurse testified that the assessment was completed with Claimant and her homemaker aide. During the assessment, Ms. Sickles identified the Claimant's functional deficits as eating, bathing, grooming, and dressing.
- 3) On March 22, 2011, 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.

Based on your PAS, you have deficiencies in only 4 areas eating, bathing, grooming, and dressing.

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 the notice.

- 4) On April 15, 2011, the Claimant was issued Exhibit D-5, 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 4 areas-eating, bathing, grooming, and dressing.

- 5) The Claimant and her representatives contend that an additional deficit should be awarded in the area of bladder incontinence. The PAS assessment (Exhibit D-2) documents that the Claimant denied any form of bladder or bowel incontinence. The Claimant maintains that she misunderstood the question being asked at that assessment and believed the assessing nurse questioned her if she was "incompetent." The Claimant stated that she denied any form of incompetency, because she "is in her right mind." The Claimant indicated that she is incontinent and requires the use of incontinence supplies on a daily basis due to the frequency in which she utilizes the restroom. While outside of her home, the Claimant purported she cannot hold her urine and has difficulties making it to the restroom timely. However, the Claimant testified that she is able to make it to the bathroom while at her home, due to the small size of her apartment. The Claimant submitted Exhibit C-1 and C-2 to support the diagnosis of her incontinence. Exhibit C-2, Telephone Encounter from [REDACTED] M.D. documents in pertinent part:

Review of -----'s records reveal that bladder incontinence is never mentioned in any of our notes. We cannot attest to something that is not documented.

It shall be noted that the Claimant's physician noted on the bottom of the Exhibit C-2 "first letter. Information is inaccurate." The Claimant submitted Exhibit C-1, Progress Notes from [REDACTED] M.D. which lists under the Claimant's medical history, "incontinence-recurrent after corrective surgery (2009)".

Ms. Sickles testified that she questioned the Claimant if she had any accidents of the bladder and the Claimant denied any form of bladder accident. Ms. Sickles testified that the Claimant's homemaker aide was present at the assessment and all parties were in agreement with her findings at the conclusion of the assessment. Ms. Kay Ikerd, RN Bureau of Senior Services testified that a deficit is awarded in the area of incontinence, when the individual experiences accidents of the bowel or bladder three or more times a week. Ms. Ikerd contends that the information submitted from [REDACTED] M.D. does not indicate a frequency of the Claimant's bladder incontinence.

Policy dictates that a deficit is awarded in the area of incontinence when the individual is assessed at a "level 3 or higher; must be incontinent." Pursuant to testimony provided from Ms. Ikerd, deficits are awarded based on the individual's functionality inside the home and a deficit can be awarded in the area of bladder incontinence when the individual experiences three or more episodes of incontinence a week. Information submitted from the Claimant's physician documents the Claimant's incontinence after a 2009 corrective surgery, but fails to indicate a frequency of the Claimant's bladder incontinence episodes. While the Claimant experiences episodes of bladder incontinence and utilizing the restroom when outside her home, testimony inferred that the Claimant is able to utilize the restroom in her home without accident. Based on evidence and testimony presented during the hearing, the Claimant was not demonstrating a functional deficit in bladder incontinence.

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 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.

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 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 eating, bathing, grooming and dressing.
- 3) Testimony and evidence presented during the hearing failed to establish additional functional deficits. The Claimant's total number of deficits awarded is four; therefore, the Department was correct in its decision to terminate the Claimant's Aged and Disabled Waiver benefits.

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 June , 2011.

Eric L. Phillips
State Hearing Officer