



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100

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Earl Ray Tomblin  
Governor

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

July 12, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held on June 29, 2011. Your hearing request was based on the Department of Health and Human Resources' denial of Medicaid Aged and Disabled Waiver (ADW) Program services based on a finding of medical ineligibility.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.3.2).

The information submitted at your hearing revealed that the Department should have awarded five deficits and determined you medically eligible for the ADW program.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to deny benefits under the ADW Program.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Kay Ikerd, Department Representative  
Kathy Gue, West Virginia Medical Institute  
[REDACTED]

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

**IN RE:**        -----,

**Grievant,**

**v.**

**ACTION NO.: 11-BOR-1080**

**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 July 12, 2011, 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 June 29, 2011, on a timely appeal, filed April 19, 2011.

All persons offering testimony were placed under oath.

It should be noted that benefits have been continued through the hearing process.

**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  
-----, Claimant's witness  
Angel Khosa, Department representative  
Kathy Gue, Department witness

Presiding at the Hearing was Todd Thornton, 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 decision to terminate Aged and Disabled Waiver Program services to the Claimant based on a finding of medical ineligibility.

### **V. APPLICABLE POLICY:**

Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3 – 501.3.2

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

- D-1** Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §§501.3 – 501.3.2
- D-2** Pre-Admission Screening (PAS) form, dated March 8, 2011
- D-3** Letter from -----, RN, dated March 16, 2011
- D-4** Medical Necessity Evaluation Request form
- D-5** Notice of potential denial, dated March 11, 2011
- D-6** Notice of decision, dated April 12, 2011

### **VII. FINDINGS OF FACT:**

- 1) The Claimant is a 79-year-old female recipient of Aged and Disabled Waiver (ADW) Services. Kathy Gue, a registered nurse employed by West Virginia Medical Institute (WVMI), completed a pre-admission screening (PAS) assessment of the Claimant on March 8, 2011 (Exhibit D-2) to reevaluate medical eligibility for the program. The Department issued a potential denial notice (Exhibit D-5) on March 11, 2011, and a denial notice (Exhibit D-6) on April 12, 2011. Both notices indicated that only four deficits were awarded, and that a minimum of five deficits are required for medical eligibility.

- 2) Angel Khosa, representative for the Department's Bureau of Senior Services, testified that the applicable policy for this proposed Department action is from the Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services. At §501.3.2, this policy (Exhibit D-1) states, as follows:

### **501.3.2 MEDICAL CRITERIA**

An individual must have five (5) deficits on the Pre-Admission Screening Form (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.

<b>Section</b>	<b>Description of Deficits</b>	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for 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) Ms. Gue testified that the four areas in which deficits were awarded from the March 8, 2011, PAS were: *bathing, dressing, grooming, and continence*.
- 4) Three additional areas were proposed on the Claimant's behalf: *transferring, walking, and vacating* a building in the event of an emergency. -----, a registered nurse and the Claimant's case manager, testified that the Claimant requires one-person assistance for both transferring and walking, and that the Claimant is physically unable to vacate a building in the event of an emergency.
- 5) The Claimant testified that, in reference to transferring, she "can't rush." She testified that she is unable to walk by herself. When asked if she would be able to vacate a building in the event of an emergency, she responded "maybe, at times," and added that she gets nervous and upset sometimes. In reference to all three areas, the Claimant testified that sometimes she gets pains in her leg and this causes her to fall.
- 6) -----, the Claimant's homemaker, testified that the Claimant requires one-person assistance for transferring. -----added that when she arrives at the Claimant's residence, sometimes it takes the Claimant ten to fifteen minutes to get to the door.
- 7) -----submitted a letter to the Department (Exhibit D-3) describing the Claimant as follows, in pertinent part:

I also noticed that she said she could vacate the building in an emergency with supervision. -----has to have help to get up from her chair or sofa. She has a walker, she is incontinent of bladder and bowels, and wears pull-ups all the time. She falls frequently.

- 8) Ms. Gue made the following comments on her PAS assessment form (Exhibit D-2) in the proposed areas:

Vacating: IN THE EVENT OF AN EMERGENCY THE MEMBER SAYS THAT SHE COULD VACATE THE HOME.

Transferring: OBSERVED THE MEMBER GET TO A STANDING POSITION FROM A CHAIR BY USING THE ARMS OF THE CHAIR TO PUSH UP.

Walking: OBSERVED THE MEMBER WALK BY HOLDING TO DOOR FACING. SHE HAS A CANE AND WALKER TO USE AS NEEDED.

## **VIII. CONCLUSIONS OF LAW:**

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for ADW Program services. The WVMi nurse determined, at the time of the PAS, that the Claimant had four qualifying deficits. Testimony on the Claimant's behalf proposed three additional deficits in the areas of *transferring*, *walking*, and *vacating* a building in the event of an emergency. Testimony from the Claimant, and on her behalf, that she requires one-person assistance transferring and walking is outweighed by the observations of the WVMi nurse to the contrary on the day of the assessment. There were indications that the Claimant falls, affecting her ability in these areas, but the described frequencies provided by the Claimant and her case manager were ambiguous and failed to quantify a frequency that would suggest she requires one-person assistance in these areas and should have been awarded deficits. The Department correctly assessed the areas of *transferring* and *walking*.
- 2) Testimony indicated that the Claimant is slow with both walking and transferring, directly affecting her ability to vacate her home in the event of an emergency. Comments recorded by the WVMi nurse indicated that she observed the Claimant walking and transferring, but omitted any reference the Claimant's gait. Although the Claimant stated she could vacate her home if she had to, it is reasonable to believe that she could have been unrealistically optimistic with this response, given her documented limitations in both walking and transferring. The Department should have awarded a deficit in the area of *vacating*.
- 3) With five deficits, the Claimant is medically eligible for the Aged/Disabled Waiver Program.

## **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the Department's decision to terminate Aged and Disabled Waiver Services to the Claimant based on failure to meet medical eligibility requirements.

## **X. RIGHT OF APPEAL:**

See Attachment

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of July, 2011.**

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**Todd Thornton  
State Hearing Officer**