



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 Washington Street, West  
Charleston, WV 25313

Earl Ray Tomblin  
Governor

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

June 29, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 28, 2011. Your hearing request was based on the Department of Health and Human Resources' denial of your medical eligibility under 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 as follows: 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 your hearing reveals that you do not meet the medical eligibility requirements for the Aged/Disabled Waiver Program, based on the results of your March 25, 2011 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny your medical eligibility for benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
WVMI

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

**IN RE:**     -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1117**

**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 June 28, 2011 on a timely appeal filed April 25, 2011.

**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 and representative  
Kay Ikerd, Department representative  
Angela Hill, Department's witness

It should be noted that the Department participated in the hearing by conference call.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its proposal to deny the Claimant's medical eligibility for benefits under the Aged/Disabled Home and Community-Based Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 501

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

**Department's Exhibits:**

- D-1 Aged/ Disabled Home and Community-Based Services Manual Section 501, three (3) pages
- D-2 Pre-Admission Screening (PAS) assessment completed March 25, 2011, eight (8) pages
- D-3 Notice of Potential Denial dated March 28, 2011, two (2) pages
- D-4 Denial Notice dated April 18, 2011, two (2) pages

**Claimant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) The Claimant was undergoing an initial evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of March 2011.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), Angela Hill, completed a medical assessment (D-2) on March 25, 2011 in the Claimant's home and determined that she does not meet the medical eligibility criteria for the program. The nurse testified that the Claimant received one (1) deficit on the Pre-Admission Screening (PAS) assessment. The Department stipulated during the hearing that the Claimant established one (1) deficit in the area of vacating a building during an emergency.
- 3) The Department sent the Claimant's physician, [REDACTED] a Notice of Potential Denial (D-3) on March 28, 2011. The form explained that if the Claimant believed she had additional information regarding her medical condition that was not considered, it

should be submitted within the next two (2) weeks to WVMI. No additional medical information was submitted on behalf of the Claimant, and a final denial notice (D-4) was sent to the Claimant on April 18, 2011. The Claimant requested a hearing on the matter on April 25, 2011.

4) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1) – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

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.

5) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 states in pertinent part:

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.

6) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 (D-1) MEDICAL CRITERIA states in pertinent part:

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

#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.

- 7) During the hearing, the WVMi nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. After listening to the WVMi nurse explain her findings, the Claimant disagreed with her conclusions, and contends that additional deficits should be awarded in the areas of bathing, dressing, bladder/bowel incontinence, walking, and medication administration.
- 8) In the functional area of "bathing," the Claimant was rated as being able to perform this function with no physical assistance from another individual. In order to receive a deficit in this area, the Claimant would need to require the physical assistance of at least one (1) individual. The nurse recorded the following pertinent information during the assessment:

Applicant reports she gets in and out of shower by herself using a bar.  
----- reports applicant fell in shower about a month ago and applicant states she was standing in the shower due to she does not have a shower chair and slipped. Applicant reports she can wash herself in the shower but states she has to sit down to wash her feet.

The Claimant's witness, -----, is also her case manager. She stated that the Claimant has difficulty reaching her lower legs due to vascular problems. She added that the Claimant has several open sores on her lower legs, and that she has not been able to cleanse her lower legs adequately during her bathing. She added that the Claimant has diabetes, and that it is very important that these sores be cleansed adequately. Further, she stated that as a result of this poor hygiene, the sores are not healing as they should. ----- also added that the Claimant has fallen several times during her attempts to shower alone and an ambulance was called recently to assist in getting her back up and out of the tub after a fall. She went on to say, regarding the incident, that she had to use her key to go into the Claimant's home that day because they had not heard from her, and that she found her lying down in the shower with the water still running. She added that the Claimant was unable to get herself up. She also clarified that this incident happened approximately one month prior to the PAS assessment being completed.

The Claimant added that she tries to get the sores on her lower legs cleansed “as best she can” but that she “still has problems with them sores.” She stated her family doctor is concerned about the sores and that she is not getting her lower legs cleansed adequately. She added that she is also supposed to put antibiotic cream on her legs but she has not been able to do that adequately either.

The nurse testified that she was not notified during the assessment that the Claimant had open sores on her lower legs or anywhere on her body. She added that the Claimant told her she could cleanse her lower legs, and that she demonstrated that she could bend over from sitting and reach her feet. She stated that the Claimant was also able to pull her foot up and across her knee from a sitting position. When asked whether she further questioned the Claimant as to how she is able to wash her lower legs and feet from a seated position in the shower when she does not have a shower chair in which to sit, she answered that she did not ask for clarification from the Claimant, and assumed this was being done possibly outside the shower.

- 9) In the functional area of “dressing,” the Claimant was rated as being able to perform this function with no physical assistance from another individual. In order to receive a deficit in this area, the Claimant would need to require the physical assistance of at least one (1) individual. The nurse recorded the following pertinent information during the PAS assessment:

Applicant is wearing a pullover shirt, pants, socks, and tennis shoes at this time. Applicant denies needing any hands on assist with any part of dressing.

----- testified that the Claimant has reported to her that she does not change her socks daily due to the difficulty she has in performing this function. She stated that the Claimant does not have difficulty with putting on shirts and pants, but needs physical assistance with changing her socks. She reiterated that it is very important that proper hygiene be exercised in this area due to the sores the Claimant has on her lower legs.

The Claimant corroborated -----testimony, and added that she has difficulty sometimes lifting her leg to put socks on. She added that sometimes she does not change her socks because of this difficulty. She stated that she has slip on shoes and has no difficulty in slipping on her shoes. When asked if she remembers telling the nurse on the day of the assessment that she does not need hands on assistance in dressing, she stated that she remembered having the discussion but does not recall what she specifically told the nurse in this regard.

The nurse testified that the Claimant reported needing no assistance in this area, and that because her hand grips were “good,” and she could reach down and touch her toes she did not ask further questions. The nurse noted during the assessment that the Claimant was able to fully extend her arms above her head and reach around her back without difficulty, and that she can bend over from a sitting position to reach her feet without difficulty. Further, the nurse documented that the Claimant can pull her foot up to the opposite knee to reach her feet without difficulty.

There was no evidence provided to show that the nurse fully explained to the Claimant what is considered when determining an individual's functional ability in the area of dressing; therefore, it is unclear whether the Claimant understood that putting on socks was included in this assessment when she gave the documented response, "denies needing any hands on assist with any part of dressing."

- 10) In the functional area of "bladder and bowel incontinence," the Claimant was rated as being occasionally incontinent. In order to receive a deficit for bladder and/or bowel incontinence, an individual must be "totally incontinent", meaning having bowel/bladder incontinence more than three (3) times per week. The nurse recorded the following pertinent information during the PAS assessment:

Applicant reports she has occas [occasional] bladder accidents and states it does not happen very often. Applicant states maybe 1 [one] every couple weeks. She states last bladder accident was a day or two ago. Applicant denies she uses any Depends or pads. Applicant reports she has bowel accidents occas [occasionally] if she has diarrhea and last accident was a couple weeks ago.

----- stated that she knows the Claimant more than the normal amount of laundry. The Claimant, however, stated that the nurse's comments regarding her functional abilities in this area are accurate.

- 11) In the functional area of "walking," the Claimant was rated as being able to walk with supervision and/or assistive devices. In order to receive a deficit in this area, the Claimant would need to require the physical assistance of at least one (1) individual. The nurse recorded the following pertinent information during the PAS assessment:

RN [registered nurse] observed applicant walk in the apt [apartment] and she is independent at this time but states she does hold on to the walls or furniture at times if she feels she is going to fall. Applicant reports she uses a cane in the apt. [apartment] at times. Applicant states she has falls and last fall was in the apt. [apartment] a month ago due to loosing [sic] her balance and went to the ER [emergency room], no major injuries reported.

----- stated that the Claimant was falling on occasion in her home during the timeframe when the PAS assessment was conducted. The nurse stated that she did not question the Claimant further because she was independently walking in the home during her visit. Although the evidence shows that the Claimant had been subject to falls; there was no evidence provided to show that the Claimant has required someone to physically assist her with walking.

- 12) In the functional area of "medication administration," the Claimant was rated as being able to administer her own medications. In order to receive a deficit in this area, the Claimant would need to be unable to administer her own medications. The nurse recorded the following pertinent information during the PAS assessment:

Applicant reports she takes her medication from the bottles herself every day and does not need assist or reminders.

----- stated that the Claimant is forgetful, and that sometimes she forgets to take her medication. She added that on occasion the Claimant has taken too many doses of medication because she forgot that she had already taken it. She further stated that the Claimant needs prompting and supervision in order to take her medication correctly. The nurse pointed out that policy stipulates that a rating of “prompting/supervision” in this area does not qualify an individual for a deficit. There was testimony provided during the hearing to support that the Claimant is required to apply antibiotic cream to the “sores” located below her knee area, and that the Claimant is unable to perform this function adequately.

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

- 1) Policy dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver (ADW) Program.
- 2) The Claimant received one (1) deficit during the March 2011 PAS assessment, in the area of vacating a building in an emergency. She must be assessed four (4) additional deficits in order to be determined medically eligible for the program. The Claimant contested the ratings she received in the areas of bathing, dressing, bladder/bowel incontinence, walking, and medication administration.
- 3) In order to receive a deficit for bladder or bowel incontinence, policy requires that an individual must show evidence of being totally incontinent. The evidence does not support that the Claimant is totally incontinent of bowel or bladder. The Claimant agreed during the hearing with the nurse’s documented notes which provide that the Claimant does not have bladder or bowel incontinence more than occasionally. She stated that these incidents happen only every few weeks, and no other evidence was provided to support a more regular occurrence. No deficit is found in this area.
- 4) In order to receive a deficit for walking, policy requires that an individual must require the physical assistance of at least one (1) individual. The evidence shows that the Claimant is able to walk independently and/or with the use of assistive devices. Although there was evidence presented to support the Claimant has had “falls”, there was no evidence to support that the Claimant has required at least one (1) individual to physically assist her in order to walk. No deficit is found in this area.
- 5) Having been unable to find deficits in the areas of bladder/bowel incontinence and walking, it is now not possible for the Claimant to be awarded four (4) deficits. As a result, the remaining functional areas contested, which include bathing, dressing, and medication administration, will not be addressed.
- 6) As result of the above conclusions, the Claimant has not established the required five (5) deficits in order to establish medical eligibility for the Aged/Disabled Waiver program.



- 7) The Department was correct in its decision to deny medical eligibility in the Aged/Disabled Waiver program based on the results of the February 2011 PAS.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny the Claimant's medical eligibility under the 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 29<sup>th</sup> Day of June, 2011.**

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**Cheryl Henson  
State Hearing Officer**