



**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**

July 8, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 30, 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, RN, Bureau of Senior Services
[REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1123

**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 April 25, 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

-----, Case Manager

-----, Homemaker RN

-----, Homemaker Aide

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 Assessment dated February 16, 2011
- D-3 Notice of Potential Denial dated February 28, 2011
- D-4 Notice of Decision dated April 20, 2011

Claimants' Exhibits:

- C-1 Physician's statements from [REDACTED]

VII. FINDINGS OF FACT:

- 1) On February 16, 2011, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for his 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. During the assessment, Ms. Sickles identified the Claimant's functional deficits as vacating a building and dressing.
- 3) On February 28, 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 2 areas vacate a building and dressing.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding his medical condition to WVMi within a two week timeframe from the date of the issuance of the notice.

- 4) On March 14, 2011, -----Case Manager [REDACTED] sent additional information (Exhibit C-1) concerning the Claimant's February 21, 2011 back surgery. The exhibit documents the Claimant's decreased ability in grooming since his surgery. Also included in the documentation was a Supplemental Neurosurgical Report completed by [REDACTED] M.D., which documents pertinent part:

Since his surgery, his ability to ambulate, care for himself, or groom himself has persisted since he had a major back operation with a fusion. Therefore, I do feel that he would benefit from home services assistance at least for the next 6 weeks until he is reevaluated by myself.

Ms. Sickles noted in the assessment that the Claimant informed her of the pending surgery during the assessment. Furthermore, Ms. Sickles documented that she was unable to consider the additional information because the surgery occurred after the conducted assessment.

- 5) On April 20, 2011, the Claimant was issued Exhibit D-5, Notice of Denial, informing him 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 2 areas-vacate a building and dressing.

- 6) -----contended that the Claimant had surgery one week after the assessment which resulted in continued impairment of the Claimant's functional abilities. The matter before the Board of Review is whether or not the assessment completed by the assessing nurse in February 2011, was accurate based on information known at the time. According to testimony, the Claimant had a surgical procedure performed one week after the conducted assessment. The assessing nurse acted upon information that was made available to her at the time of the assessment and

cannot make a prediction concerning an individual's future abilities in regards to her determination of that individual's functional abilities for Aged and Disabled Waiver Program benefits. Additionally, the Hearing Officer cannot reassess the Claimant's abilities with new information that was unavailable to the assessing nurse at the time of the assessment.

- 7) The Claimant contended that additional deficits should have been awarded in eating, grooming and bathing.

Eating-The Claimant's argument regarding a functional deficit in the area of eating concerned his inability to prepare his own meals due to pain. Kay Ikerd, RN Bureau of Senior Services testified that meal preparation is not considered in determining a functional deficit in eating and the assessing nurse evaluates the individual's ability to eat once the meal has been prepared. Whereas, the Claimant only requires assistance in meal preparation and offered no testimony concerning difficulties with his ability to feed himself, an additional deficit cannot be awarded in the contested area.

Grooming-The Claimant indicated that he required assistance with combing his hair, shaving and toenail care. Ms. Sickles documented in the assessment "He can do own mouth care and has own teeth. States he can comb or brush own hair, can care for own fingernails, can care for his toenails. He can apply lotion, powder and deodorant. Reports he does use a razor but does not need assistance to perform task." Information provided during the assessment did not indicate that the Claimant was having difficulties in the functional area; therefore, the assessing nurse correctly assessed the Claimant based on information provided during the assessment.

Bathing-----, the Claimant's homemaker testified that prior to his surgery, the Claimant required assistance in bathing. [REDACTED] testified that she must assist the Claimant with bathing in order to prevent falls and wash his back, legs and hair. Ms. Sickles documented in the PAS assessment that the Claimant, "can bathe independently, does not need assistance transferring in and out of tub/shower. Uses grab bars during transfers in and out of the shower/tub. He states abilities to wash all areas. Does use shower chair." Ms. Sickles testified that she administered a range of motion test on the Claimant, in which he was able to raise his arms over and around his head and reach behind his back. Information provided during the assessment did not indicate that the Claimant was having difficulties in the functional area; therefore, the assessing nurse correctly assessed the Claimant based on information provided during the assessment.

- 8) 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.

- 9) 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.

10) 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 vacating during an emergency 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 two; 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 July, 2011.

Eric L. Phillips
State Hearing Officer