



**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 12, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 1, 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-1178**

**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 11, 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's daughter

-----, Case Manager

Cecilia Brown, Quality Assurance Manager-Bureau of Senior Services

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 March 8, 2011
- D-3 Notice of Potential Denial dated April 19, 2011
- D-4 Notice of Decision dated May 3, 2011
- D-5 Letter from [REDACTED] M.D. dated June 3, 2011 and additional medical information

**VII. FINDINGS OF FACT:**

- 1) On March 8, 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. During the assessment, Ms. Sickles identified the Claimant's functional deficits as vacating a building, bathing, grooming and dressing.
- 3) On April 19, 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 vacate a building, 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 20, 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-vacate a building, bathing, grooming and dressing.

- 5) -----, the Claimant's daughter contended that additional deficits should have been awarded to the Claimant in the areas of walking, orientation, eating and medication administration.

The following addresses the contested areas:

**Walking**-----stated that her mother requires a cane, walker or furniture support for assistance with her ambulation. -----stated that her mother demonstrated her walking ability during the assessment, but this demonstration was not reflective of her true ability because she was only asked to walk a few steps during the demonstration. Ms. Sickles assessed the Claimant's functional ability of walking as Level 2 Supervised/Assistive device and documented in the assessment the following, "uses both walker and cane in the home as an assistive device."

Policy requires that a deficit is awarded in the area of walking when the individual is assessed at a Level 3 or higher which is defined as requiring one-person assistance in the home. Testimony revealed that the Claimant required assistive devices to ambulate, but failed to support a requirement of one-person assistance. Therefore, the assessing nurse correctly assessed the Claimant and a deficit in the contested area cannot be awarded.

**Orientation**-----stated that her mother has difficulty remembering recent conversations. Ms. Sickles assessed the Claimant as a Level 2 Intermittent Disoriented and documented the Claimant's orientation in the assessment as, "Member was only able to recite current date after looking at calendar. Member knew current address including city, state and zip and was able to tell me her DOB."

Policy requires that a deficit is awarded when the individual is assessed at a Level 3 or higher, meaning that the individual is totally disoriented or comatose. While the Claimant has some difficulties in the contested area, she did not display disorientation to person, place and time; therefore, the Claimant was correctly assessed and an additional deficit cannot be awarded.

**Eating**-----indicated that her mother cannot prepare her own foods. ----- testified that her mother can feed herself, but has some difficulties with swallowing. -----indicated that her mother does not eat meats, only soft foods that are easily swallowed due to her dysphagia. The assessing nurse assessed the Claimant's functional ability of eating as Level 1 Self/Prompting and noted in the assessment that the Claimant, "feeds self without difficulty, denies needing assistance cutting up food, and states I have good strength in my hands. Member prepares some meals, but when workers are there they prepare a meal for the member."

Policy requires that a deficit is awarded in the area of eating when the individual is assessed as a Level 2 or higher, meaning requiring physical assistance to get nourishment. This policy does not consider food preparation in the determination of the individual's ability to eat. Testimony indicated that the Claimant can feed herself and only had difficulty preparing her meals. Testimony failed to establish that the Claimant required physical assistance to feed herself; therefore, the Claimant was correctly assessed and an additional deficit cannot be awarded.

**Medication Administration**-----purported that her mother must grind up some of her larger medications because of her difficulty swallowing and sometimes forgets to take her medications. The assessing nurse assessed the Claimant's medication administration as prompting and supervision and documented in the assessment the following information, "The member takes the medications out of the pill planner and puts them in her hand and puts them up to her mouth to swallow them. She crushes some pills due to dx. of dysphagia."

Policy requires that a deficit is awarded in the area of medication administration when the individual is not capable of administering his/her own medications. The Claimant has a documented diagnosis of dysphagia (difficulty swallowing) and testimony and evidence revealed that the Claimant was able to grind up and place the medications in her mouth. The testimony failed to establish that the Claimant was incapable of administering her own medications; therefore, the assessing nurse was correct in her assessment of the Claimant and an additional deficit cannot be awarded in the contested area.

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 vacating a building, 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 July, 2011.**

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**Eric L. Phillips**  
**State Hearing Officer**