



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

July 21, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 19, 2011. Your hearing request was based on the Department of Health and Human Resources' termination 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 meet the medical eligibility requirements for the Aged/Disabled Waiver Program, based on the results of your April 20, 2011 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to terminate 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-1267

**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 July 19, 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

Kay Ikerd, Department representative

Brenda Myers, 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 terminate 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 April 20, 2011, eight (8) pages
- D-3 Notice of Potential Denial dated April 26, 2011, two (2) pages
- D-4 Letter from Claimant's physician dated April 22, 2011, one (1) page
- D-5 Notice of Decision dated May 2, 2011, two (2) pages

Claimant's Exhibits:

- C-1 Letter from Claimant's landlord dated June 13, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of April 2011.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), Brenda Myers, completed a medical assessment (D-2) on April 20, 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 four (4) deficits on the Pre-Admission Screening (PAS) assessment. The Department stipulated during the hearing that the Claimant established one (1) deficit each in the areas of eating, dressing, bathing, and grooming, for a total of four (4) deficits.
- 3) The Department sent the Claimant's case management agency, [REDACTED] a Notice of Potential Denial (D-3) on April 26, 2011. The notice 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 WVMH. No additional medical information was submitted on behalf of the Claimant, and a final denial notice (D-5) was sent to the Claimant on May 2, 2011. The Claimant requested a hearing on the matter on May 10, 2011. Prior to the Department sending its final denial notice, Ms. Myers sent the Claimant's listed physician, Dr. [REDACTED] a letter on April 22, 2011 in an attempt to clarify certain inconsistent information received during the assessment. The nurse asked the doctor to clarify whether or not the Claimant has a "terminal" diagnosis as the Claimant was listed as "terminal" by the physician on an earlier document. She also asked him to confirm whether the Claimant has a diagnosis of paralysis and whether or not she has pain. The physician simply signed the letter and faxed the document back to the Department on April 22, 2011 without answering any of the nurse's questions. The nurse did not contact the physician again for clarification. The Department contends that the "terminal" diagnosis was marked in error as there was no evidence of any terminal diagnoses provided.

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 decubitus and vacating a building.
- 8) In the area of vacating a building in an emergency, the Claimant was rated as being able to vacate the building “with supervision.” Policy provides that in order to receive a deficit in this area, the Claimant would need to be physically or mentally unable to vacate the building. The nurse recorded the following pertinent information during the assessment:

We discussed vacating the building and she states she could physically get up and walk out the building and has done so with fire drills. She states if it occurred [sic] while she was sleeping she would probably need awoken as she sleeps very soundly and then CM [case manager] speaks up and says last year you said you would panic and she says “yeah I probably would get nervous.” I asked if at that point then could she follow directions from someone verbally instruction [sic] her to vacate and she says yes. Member does not use a cane or walker and states at times she may lose [sic] her balance because of lack of

movement in right arm/hand and will reach out with left hand to steady herself with the wall or some other object. She says when walking down stair [sic] she will hold onto rail with left hand.

The Claimant is diagnosed with anxiety, bipolar disorder, arthritis, paralysis of her right arm, and depression. She lives in a second floor apartment. The Claimant takes numerous medications for her illnesses and claims that this causes her to sleep very deeply and she is unable to awaken by means of someone yelling at her, or by other loud noises or alarms. The Claimant testified that when she is asleep and it is necessary for her to be awakened, someone must physically shake her in order to wake her. Then, she stated that she requires assistance getting dressed if she must exit the building. The Claimant's mother, ----, testified that it has been necessary on several occasions for her to wake the Claimant while she was sleeping, and she always has to shake her in order for her to be awakened. ----stated that she lives within site of the Claimant's apartment building. She added that one day a man had bolted from the apartment building and onto the railroad tracks where he was struck. She stated that she heard from her nearby home numerous sirens from emergency response vehicles and saw that they were at the Claimant's apartment building. She stated that she tried numerous times to call the Claimant on the telephone, but Claimant would not answer the phone. She stated that she had to go to the Claimant's apartment, enter and shake the Claimant in order for her to wake up. She added that the Claimant was totally unaware of the happenings around her. The Claimant submitted a letter (C-1) from her landlord in support of her contention that she needs physical assistance in order to vacate her home during emergencies which occur while she is sleeping. In the letter, the landlord stated that he has physically had to wake the Claimant on numerous occasions during fire drills because she was sleeping and could not hear the alarms. The landlord also stated that he must physically assist her with dressing prior to exiting the building. The landlord also provided that he has provided a key to the Claimant's apartment to a trusted tenant with instructions that in the event of a true emergency, he is to make sure she gets up and out of the building.

The WVMI nurse testified that although the Claimant indicated she would not be able to wake without physical assistance, she rated her as needing only supervision because she did not have a mental diagnosis which would be considered as prohibiting an individual from exiting the building during emergencies without physical assistance. She stated that just because she sleeps soundly does not constitute being mentally unable to vacate during emergencies. The Department contends that there is nothing in policy which explains this reasoning, but that the nurses are trained to make such a rating based on the Claimant's assessed circumstances.

- 9) In the area which addresses whether or not an applicant has a decubitus, the Claimant was rated as having no decubitus. Policy provides that in order to receive a deficit in this area, the Claimant would need to have a decubitus, or pressure sore, rated at a level three (3) or four (4). The Department explained this type of pressure sore as one that is deep. The Claimant stated that at the time of the assessment she did not have a pressure sore at all, but that at times she gets sores on her right arm which is constantly enveloped by a stabilizing support.

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 four (4) deficits during the April 2011 PAS assessment, in the areas of eating, bathing, dressing, and grooming. She must be assessed one (1) additional deficit in order to be determined medically eligible for the program. The Claimant contested the ratings she received in the areas of vacating a building during an emergency, and whether or not she has a decubitus.
- 3) In order to receive a deficit for vacating a building during an emergency, policy requires that an individual be either physically or mentally unable to vacate the building. If an individual is found to be able to vacate the building in these types of situations with supervision alone, then no deficit is awarded. Policy does not elaborate to state what constitutes physical or mental inability to vacate a building during an emergency. The Claimant was previously rated as being able to vacate with supervision and no deficit was awarded. The totality of the evidence supports that the Claimant is not always able to vacate her building during emergencies with supervision. She is unable to wake herself with alarms or by having others speaking loudly commanding her to get up. She requires someone to physically shake her in order to awaken her, which does not fit the criteria for a rating of "with supervision." Because policy does not elaborate other than to say that an individual must be physically or mentally unable to vacate their home during an emergency, the evidence supports that this is the proper rating in this instance. Although the nurse testified that she is trained to rate this type of situation as needing only supervision to vacate, there was no written evidence provided in support of this claim. Additionally, the Claimant reported during the assessment that she would need awakened, and she also provided statements in support of her possibly panicking in such a situation. The nurse did not further question her about her statement of needing to be awakened in order to determine how much need she required. She is diagnosed with bipolar disorder and anxiety which supports that she would have additional problems in this area.
- 4) In order to receive a deficit for having a decubitus, an individual must have a stage three (3) or four (4) decubitus. The evidence does not support that the Claimant has a decubitus.
- 5) An additional one (1) deficit is awarded for vacating a building during an emergency. The Claimant is not able to vacate her home at times with just supervision.
- 6) As result of the above conclusions, the Claimant has established the required five (5) deficits in order to establish medical eligibility for the Aged/Disabled Waiver program.
- 7) The Department was not correct in its decision to deny medical eligibility in the Aged/Disabled Waiver program based on the results of the April 2011 PAS.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the Claimant's medical eligibility under the Aged/Disabled, Title XIX (HCB) Waiver Program. The Department is to consider the newly awarded deficit in determining appropriate level of care for continuing benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of July, 2011.

Cheryl Henson
State Hearing Officer