



**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**

August 31, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 18, 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-1465

**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 June 27, 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

-----, RN

Kay Ikerd, RN-Bureau of Senior Services (BoSS)

Debbie Sickles, RN-West Virginia Medical Institute (WVMI)

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 May 31, 2011
- D-3 Notice of Potential Denial dated June 1, 2011
- D-4 Notice of Decision dated June 16, 2011

Claimants' Exhibits:

- C-1 Claimant's Consultation Notes from [REDACTED] M.D. dated March 23, 2011
- C-2 Additional Information from [REDACTED] M.D. dated June 1, 2011

VII. FINDINGS OF FACT:

- 1) On May 31, 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 the Claimant. During the assessment, Ms. Sickles identified the Claimant's functional deficits as vacating a building, bathing, grooming and dressing.
- 3) On June 1, 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 WVMH within a two week timeframe from the date of the issuance of the notice.

- 4) On June 16, 2011, the Claimant was issued Exhibit D-4, 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 and her representatives contend that additional deficits should have been awarded in the areas of transferring, walking, orientation, and continence.

The following addresses the contested areas:

Transferring-----, Case Manager [REDACTED] testified that the Claimant's husband is unable to provide the Claimant with assistance because he is wheelchair bound and requires assistance from a Homemaker Aide. ----- purported that the Claimant relies on her Homemaker Aide to provide her with assistance in transferring, but has adapted and utilized ways in which she can transfer and function in her aide's absence from the home. The Claimant stated that there are occurrences in which she cannot transfer off her chair and may require a battery operated wheelchair in the future. Ms. Sickles stated that the Claimant was rated as a Level 2, requiring a supervised/assistive device, meaning that the individual requires an assistive device such as a cane, walker, furniture or walls to aide in their ability to transfer. Ms. Sickles testified that she did not witness the Claimant requiring assistance from other individuals in her ability to transfer during the assessment and noted the following in the PAS assessment:

In and out of chair: Member positions her walker in front of her and then uses the table top to help steady her as she stands. In and out of bed: member sleeps on a regular bed and states she holds onto the table next to her bed and then uses the walker to help steady her. Raised or standard toilet: Uses a raised toilet and uses a rail on the side of the toilet and in the back of the toilet to help assist her in transferring on and off of the toilet. Use of BSC [bed side commode] denies use.

Policy dictates that a deficit is awarded in the area of transferring when the individual requires one or two person assistance in their ability to transfer. During the assessment, the assessing nurse observed the Claimant's ability to transfer, without assistance, and there was no indication from the Claimant that she required assistance to aide in her ability to transfer. While the Claimant has difficulties in the contested area, documentation reveals that she utilizes assistive devices to aid in her ability to transfer. Based on the information provided and observed during the assessment, the assessing nurse correctly assessed the Claimant as a Level 2 supervised/assistive device and an additional deficit in the contested area cannot be awarded.

Walking----- questioned why the Claimant was awarded a deficit in her ability to vacate during an emergency and not in transferring and walking, claiming that the Claimant requires assistance in the functional area. The Claimant purported that she has an unsteady gait which varies on a daily basis. The Claimant stated that the assessing nurse watched her walk a few short steps, but did not observe her walk throughout her house. The Claimant purported that she has days of instability in which her walker will not keep her upright and provided testimony concerning falls in which she has experienced. -----, Homemaker RN [REDACTED] indicated that the Claimant suffers from paralysis of her left leg and continually wears a brace due to her cerebral palsy. The Claimant provided Exhibit C-1, Consultation Notes from [REDACTED] M.D. which documents the Claimant's frequent falls and Exhibit C-2, Additional Information from [REDACTED] which documents a contracture to the Claimant's left knee. Ms. Sickles indicated that a deficit is awarded in the area of walking when the individual requires hands on assistance. Ms. Sickles testified that the Claimant did not require assistance to walk during the assessment and documented the following in the PAS assessment:

Assistive device: Member uses a roller walker as her assistive device and exhibited an unsteady gait. Recent falls inside the home: member states she last fell in the kitchen in April.

Ms. Sickles testified that she took into account an emergency situation and believed that the Claimant would require assistance in vacating, due to her unsteady gait, but believed the Claimant did not require regular assistance in the area.

Policy dictates that a deficit is awarded in the area of walking when the individual requires one-person assistance in the home. During the assessment, the assessing nurse observed the Claimant walk, without assistance, and there was no indication from the Claimant that she required assistance in her ability to ambulate. While the Claimant has difficulties in the contested area, documentation revealed that the Claimant was able to ambulate on the day of the assessment with assistance from her walker. Based on the information provided during the

assessment, the assessing nurse correctly assessed the Claimant as Level 2 supervised/assistive device and an additional deficit in the contested area cannot be awarded.

Orientation----- testified that the Claimant was admitted into the hospital in March, 2011 for disorientation and has “blacked out” on several occasions during the last year. ----- indicated that the Claimant has periods of confusion and disorientation. The Claimant described an episode in which she “blacked out” and was hospitalized. Ms. Sickles indicated that a deficit is awarded in the contested area when the individual is disoriented to person, place, and time. Ms. Sickles documented in the PAS assessment that the Claimant was, “able to recite full address including city, state, and zip code. Able to tell me the current month, day, and year, and able to give me DOB.” Ms. Sickles stated that the Claimant was aware of her surroundings during the assessment and did not have reason to believe that the Claimant was not capable of answering questions during the assessment.

Testimony and evidence revealed that a deficit is awarded in the area of orientation when the individual is disoriented to person, place, or time. During the assessment, the Claimant was able to provide the assessing nurse with information concerning the current month, day, year, as well as her date of birth. Based on information provided during the assessment, the assessing nurse correctly assessed the Claimant as oriented and an additional deficit in the contested area cannot be awarded.

Continence----- indicated that the Claimant is incontinent of bladder and bowel. ----- stated that the Claimant has been prescribed Lasix and experiences situations in which she cannot make it to the restroom and “dribbles”. The Claimant purported that she did not want to admit to her incontinence and stated that “there are times that I make it and times that I don’t” referring to the restroom. Ms. Sickles testified that the Claimant denied bowel, bladder incontinence, and the use of incontinence products during the assessment. Ms. Sickles stated that she did not observe any incontinence supplies on the Claimant’s furniture at the assessment.

Testimony and evidence revealed that the Claimant failed to report any bowel or bladder incontinence at the time of the assessment. The assessing nurse did not observe any use of incontinence supplies on the Claimant’s household furniture. Based on the information provided during the assessment, the assessing nurse correctly assessed the Claimant as continent and an additional deficit in the contested area cannot be awarded.

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 an additional functional deficit. 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 August, 2011.

Eric L. Phillips
State Hearing Officer