



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26555

Earl Ray Tomblin
Governor

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

October 21, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 18, 2011. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for benefits and services through the Medicaid 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 that 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 the hearing fails to demonstrate that you require a sufficient number of services, and the degree of care, to medically qualify for benefits and services provided through the Medicaid Aged/Disabled Home and Community Based Services Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the Department's action in denying your application for benefits and services through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 11-BOR-1738

**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 October 18, 2011 on a timely appeal filed August 2, 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 Daughter

-----, [REDACTED]

Sarah Birkhead, RN, Bureau of Senior Services (BoSS), Department's representative (Participated telephonically)

Debra Lemasters, RN, West Virginia Medical Institute (WVMI), Department's witness (Participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its action to deny the Claimant's application for benefits and services through the Medicaid Aged/Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged & Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) assessment completed on May 11, 2011
- D-3 Notice of Potential Denial dated May 18, 2011
- D-4 Notice of Termination/Denial dated June 1, 2011

VII. FINDINGS OF FACT:

- 1) On May 11, 2011, the Claimant was evaluated (medically assessed) to determine medical eligibility for participation in the Aged/Disabled Waiver Services Program, hereinafter ADW Program [Exhibit D-2, Pre-Admission Screening (PAS) form].
- 2) On or about May 18, 2011, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

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 Continence.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made, if received within two weeks.

- 3) The Claimant was notified that medical eligibility could not be established via a Termination/Denial Noticed dated June 1, 2011 (Exhibit D-4). This notice states, in pertinent part:

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. A copy of your PAS is enclosed.

To be eligible for benefits you must be deficient in at least 5 of the 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedure Manual.

Based on the PAS you have deficiencies in only 4 areas. The areas in which deficiencies were found are checked below. Vacate a Building, Bathing, Grooming and Continence.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates four (4) deficits (Vacating a Building, Bathing, Grooming and Continence) but indicated the medical assessment completed in May 2011 fails to identify five (5) functional deficits as required by ADW Program medical eligibility criteria. The Department's witness, Debra Lemasters, RN, WVMI, testified that she requested confirmation of a diagnosis of arthritis and dysphagia from the Claimant's physician, however, nothing was returned.
- 5) The Claimant contends that she should have been found medically eligible as she is also demonstrating a functional deficit in walking. The Claimant testified that she can ambulate for short distances but that she tires easily. The Claimant further noted that she has paralysis in her left foot and the arthritis in her knees has gotten worse since the assessment. It should be noted, however, that the medical evidence (PAS) fails to verify a diagnosis of arthritis or paralysis.
- 6) In order to be awarded a functional deficit in walking, the individual must require hands-on physical assistance to ambulate in her home. Testimony proffered by RN Lemasters reveals that the Claimant uses a cane or a walker to ambulate in her home. RN Lemasters' testimony is consistent with the findings documented in the PAS (D-2, page 8 of 9). It is also noted that the Claimant used a walker to ambulate at the October 18, 2011 hearing. Pursuant to the ADW Program policy, the Claimant's functional ability to walk in her home was correctly assessed at a level-2 (supervised/assistive device) on the PAS. As a result, a deficit cannot be awarded.
- 7) Aged/Disabled Home and Community-Based Services Manual Section 501.3 (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.

- 8) 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 A/DW 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.
- 9) 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 B (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) Medicaid policy requires that an individual must demonstrate five (5) functional deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. This is the same level of care that is required to qualify medically for nursing home services.
- 2) The evidence reveals that the Claimant was awarded four (4) deficits on a PAS completed by WVMI in May 2011 – Vacate a building [in the event of an emergency], Bathing, Grooming and Continence.
- 3) The evidence submitted at the hearing fails to confirm that the Claimant was demonstrating any additional deficits when the assessment was completed.
- 4) Whereas the Claimant demonstrated only four (4) program qualifying deficits, medical eligibility for the Aged/Disabled Waiver Program cannot be established.

X. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's action to deny the Claimant's application for benefits and services through the Medicaid, 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_____ Day of October, 2011.

**Thomas E. Arnett
State Hearing Officer
Member, State Board of Review**