



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 28, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 27, 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 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/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-1739

**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 27, 2011 on a timely appeal filed July 12, 2011 (Received by the Hearing Officer on August 24, 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 Son / witness

-----, Claimant's Daughter-in-law / witness

Kay Ikerd, 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 24, 2011
- D-3 Notice of Potential Denial dated May 31, 2011
- D-3a Correspondence from the Claimant dated July 8, 2011
- D-3b Verification of Medical Conditions/Symptoms from Dr. [REDACTED] dated May 25, 2011
- D-4 Notice of Termination/Denial dated June 15, 2011

VII. FINDINGS OF FACT:

- 1) On May 24, 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 31, 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 2 areas – Grooming and Dressing.

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 Notice dated June 15, 2011 (Exhibit D-4). This notice states, in pertinent part:

Your PAS (Pre-Admission Screening Form), indicated deficiencies in two (2) areas [Grooming and Dressing]. Because you have less than five (5) deficits, you are not medically eligible for the Aged and Disabled Waiver Program.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates two (2) deficits [Grooming and Dressing], but indicated the medical assessment completed in May 2011 fails to identify five (5) functional deficits as required by ADW Program medical eligibility criteria.
- 5) The Claimant contends that she should have been found medically eligible as she is also demonstrating a functional deficit in the following areas: Vacating [in the event of an emergency], Incontinence, Walking and Transferring. The following will include a finding specific to each of the contested areas:

Incontinence – The Claimant purported that she had her colon removed approximately ten (10) years ago, which has caused chronic diarrhea. The Claimant noted in Exhibit D-3a, #4, that she has certain incontinence issues which are age-related, and while chronic diarrhea is again noted, specifics regarding bladder incontinence are not provided. Testimony and documentation proffered by the Department reveals that the Claimant denied episodes of bowel or bladder incontinence during the medical assessment, and denied using incontinence supplies or soiling clothes. While it is unclear if the Claimant was embarrassed to share this information with the evaluating nurse, incontinence was denied during the medical assessment and there was no clinical documentation submitted in the two week period following the potential denial notice (Exhibit D-3) to verify a diagnosis of incontinence. The evidence fails to demonstrate that a deficit should have been identified for incontinence [bowel or bladder].

Walking – In order to receive a deficit in walking, an individual must require hands-on physical assistance by one person to walk. Evidence presented by the Claimant reveals that she has PAD [Peripheral Artery Disease] which causes her to get short of breath. The Claimant further testified that she has had both knees replaced and has difficulty going up a single step or walking on uneven surfaces (See Exhibit D-3a #1, #2, and #3). The Claimant acknowledges in Exhibit D-3a, #1, however, that “Inside the home I am able to hold onto furniture or the wall, but I must pause to get my breath often while doing household chores.” RN Lemasters presented testimony consistent with the documentation found in Exhibit D-2 and noted that she observed the Claimant walk from the living room to the kitchen on two occasions. The Claimant’s gait was noted to be slow and the Claimant denied the use of an assistive device. Upon consideration of the criterion, the Claimant does not qualify for a deficit in walking.

Transferring – A deficit can only be awarded in transferring if the individual requires hands-on physical assistance by another person. Testimony presented on behalf of the Claimant indicates that she uses a lift chair and has raised her mattress level to assist with transfers. The Claimant uses grab bars on the wall for support to transfer on and off the bathroom commode and RN Lemasters observed her using the table to transfer off a chair during the assessment. While it is clear that modifications have been made to assist the Claimant with transferring, there is no evidence to indicate she requires physical assistance.

Vacating – The evidence provided in support of walking and transferring - slow gait when ambulating, PAD, and modifications for transferring - as well as the Claimant's reported history of falls and the need to "prop the storm door open" to assist her with the step down while exiting her residence – creates substantial barriers in her ability to vacate in the event of an emergency. While it is noted that the Claimant reported she could vacate during the assessment, there is sufficient evidence to indicate vacating is problematic. Based on the evidence, a deficit in vacating [in the event of an emergency] is supported by the evidence.

6) 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.

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 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.

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 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 two (2) deficits on a PAS completed by WVMI in May 2011 – Grooming and Dressing.
- 3) The evidence submitted at the hearing confirms one additional deficit – Vacating [in the event of an emergency].
- 4) Whereas the Claimant demonstrated only three (3) program qualifying deficits at the time PAS, 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**