



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

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

December 19, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on December 7, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny your medical eligibility for 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 Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged and 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 and Disabled (HCB) Services Manual Section 501]

Information submitted at your hearing reveals 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 deny your application for the Aged and Disabled Waiver Program.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services
-----, Central WV Aging Services, Oak Hill, WV

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

IN RE: -----,

Claimant,

v.

ACTION NO: 11-BOR-2118

**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 conducted by telephone conference call on December 7, 2011, on a timely appeal filed September 20, 2011. This hearing was originally scheduled for November 10, 2011, but was rescheduled at Department's request.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (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

-----, Central WV Aging Services, Claimant's Representative

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Teena Testa, RN, West Virginia Medical Institute, Department's Witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to deny Claimant's application for the Aged and Disabled Home and Community-Based Waiver Program based on a Pre-Admission Screening (PAS) conducted on August 22, 2011.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community-Based Services Manual Section 501.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community-Based Services Manual Section 501.3.
- D-2 Pre-Admission Screening (PAS) assessment conducted on August 22, 2011.
- D-3 Potential denial letter from APS Healthcare, dated August 29, 2011.
- D-4 Denial letter from APS Healthcare, dated September 13, 2011.

Claimant's Exhibits

- C-1 Letter from [REDACTED] dated December 1, 2011.

VII. FINDINGS OF FACT:

- 1) Claimant was an applicant for the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of the application process, a nurse from the West Virginia Medical Institute (WVMI) performed a Pre-Admission Screening (PAS) in her home on August 22, 2011. (Exhibit D-2.)
- 2) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.3.2 (Exhibit 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.

- 3) Department's witness testified that she conducted the PAS (Exhibit D-2) on August 22, 2011 in the Claimant's home. She stated that the Claimant and she were the only persons present. She added that she assessed Claimant with four (4) deficits on the PAS, for eating, grooming, dressing and continence, and therefore she did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department sent the Claimant and Claimant's physician a Notice of Potential Denial dated August 29, 2011. (Exhibit D-3.) This notice stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WVMi within the next 2 weeks." The PAS does not indicate that the Department received any additional medical information in this two-week period. The Department sent a Notice of Termination/Denial on September 13, 2011. (Exhibit D-4.)
- 5) Claimant's representative asserted that Claimant should have received additional deficits in the areas of vacating a building during an emergency, bathing and administering medications.

- 6) ***Vacating a building in the event of an emergency:*** The WVMI nurse rated the Claimant as “with supervision” and wrote in the “Nurse’s overall comments” section of the PAS, “In the event of an emergency [Claimant] states she would be able to get out of the home herself. She notes she would not need anyone to come in and physically remove her [sic] from the home. I feel she may need supervision to exit the home. [Claimant] was adamant that she could get out of her home in an emergency.” Claimant’s representative argued that one of Claimant’s medications as listed on the August 2011 PAS is Soma, 350 milligrams, which she takes for insomnia. She added that if Claimant were to take this medication before going to bed, it would be very difficult for her to wake up in time to evacuate in the event of an emergency. Department’s witness reiterated that Claimant was adamant about being able to vacate in an emergency unassisted.
- 7) ***Bathing:*** The WVMI nurse rated the Claimant at a Level 1, “Self/Prompting” and wrote “[Claimant] notes she can get herself in and out of the tub. [Claimant] states she can wash from head to toe . . . She denies needing any assistance with bathing.” Claimant’s representative argued that Claimant’s diagnosed conditions of osteoarthritis and pain prevent her from being able to get into and out of the bathtub. Department’s witness testified that during the PAS, Claimant reported she could get into and out of the bathtub, that she did not use a shower chair but stood while taking a shower, and that she had no difficulty reaching all of her body parts to clean them.
- 8) ***Administering Medications:*** The WVMI nurse recorded on the August 22 PAS that Claimant could administer her own medications and did not award a deficit. On the “Nurse’s overall comments” section, she wrote, “[Claimant] notes she counts the clicks on her insulin pen to draw up her insulin.” Claimant’s representative argued that Claimant should be assessed with a deficit for administering medications because her diabetes-related vision impairment prevents her from accurately measuring the amount of insulin she draws into her syringe and prevents her from making accurate blood sugar checks. She pointed out that the PAS states on item #27, Professional and Technical Care needs, “[Claimant] does not check her blood sugars because she cannot see.” Department’s representative argued that the PAS question concerning an individual’s ability to administer his or her medications only refers to a person’s ability to pick up a pill and put it in his or her mouth, or in the case of insulin, to give him- or herself the injection. She added that Claimant did not indicate to Department’s nurse that she was unable to inject herself.
- 9) Claimant’s representative submitted as evidence a statement from Claimant’s primary care physician dated December 1, 2011 (Exhibit C-1), which reads as follows:

This letter is in regards to [Claimant]. [Claimant] suffers from osteoarthritis and has difficulty getting in and out of her bathtub without pain. Also this issue causes her to become off-balance and [she] has had frequent falls. Her vision is also very poor and she is

unable to check her blood sugar due to this condition. She is insulin dependent and is unsure if she is injecting the correct dosage of insulin because of her vision. She also takes medication to aid in her insomnia, which can cause disorientation, and then she would be unable to vacate her home in case of a fire.

Department's representative argued that the PAS was conducted on August 22, 2011. She pointed out that the Potential Denial letter (Exhibit D-3) states "If you believe you have additional information regarding your medical conditions that was not considered, please submit those records to WVMH within the next two weeks." She added that this letter arrived long after the two-week period expired.

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 Program. On her PAS that was performed on August 22, 2011, Claimant obtained four (4) deficits.
- 2) Claimant's representative argued that deficits should have been assessed in the areas of vacating a building in the event of an emergency, bathing and administering medications.
- 3) The Department was correct in its decision not to assess a deficit in the area of vacating a building during an emergency. Department's witness testified and recorded on the PAS that "was adamant" in her insistence that she could vacate. There was no testimony or evidence submitted to suggest that Claimant could not physically stand and walk out of her home with supervision.
- 4) The Department was correct in its decision not to assess a deficit in the area of bathing. Department's witness testified and recorded on the PAS that Claimant told her she got into and out of the shower without assistance. There was no testimony or evidence to suggest otherwise.
- 5) The Department was correct in its decision not to assess a deficit in the area of administering medications. There was no testimony or evidence submitted that suggested Claimant could not give herself an insulin injection.
- 6) The letter from Claimant's primary care physician arrived too late for the assessing nurse to consider this information as part of the PAS assessment.
- 7) Claimant provided insufficient testimony to support a finding that an additional deficit should have been awarded in the assessment; therefore, the required five (5) deficits have not been established to meet medical eligibility criteria for the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny Claimant's application for 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 19th Day of December, 2011.

Stephen M. Baisden
State Hearing Officer