



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 20, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on December 15, 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
[REDACTED] RN, Coordinating Council for Independent Living, Charleston, WV

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

IN RE: -----,

Claimant,

v.

ACTION NO: 11-BOR-2165

**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 at the Logan County Office of the WV DHHR in Logan, WV, with Department's representative and witness appearing by telephone conference call on December 15, 2011, on a timely appeal filed September 29, 2011.

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

[REDACTED] RN, Coordinating Council for Independent Living, Claimant's Witness

Angel Khosa, WV Bureau of Senior Services, Department's Representative

Brenda Myers, 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 25, 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 25, 2011.
- D-3 Denial letter from APS Healthcare, dated September 15, 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 25, 2011. (Exhibit D-2.)
- 2) Aged and 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 25, 2011 in the Claimant's home. She stated that the Claimant, Claimant's witness and she were the only persons present. She added that she assessed Claimant with three (3) deficits on the PAS, for vacating a building during an emergency, eating, and bathing, 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 30, 2011. 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 indicates that the Department received additional medical information from Claimant's primary care physician, but this information did not justify assessing Claimant with any more deficits. The Department sent a Notice of Termination/Denial on September 13, 2011. (Exhibit D-4.)

- 5) Claimant asserted that she should have received additional deficits on the September 25 PAS in the areas of dressing, grooming and walking.
- 6) **Dressing:** The WVMi nurse rated the Claimant at Level 1, "Self/Prompting" and wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] states she dresses herself and can put on shirts and pants, her bra and states she can get her socks and shoes on as well. She states she has some difficulty fastening her bra and I asked if she fastens it in the front or back and she says she fastens it in the front and then turns it to the back. She says it is difficult but she manages to get it fastened." Claimant stated that she was "having a good day" on the day the PAS was conducted, while there are days when she cannot dress herself. Claimant's witness stated that at times Claimant does not wear a bra at home because she cannot fasten it without assistance. Department's witness testified that during the PAS, she was given information that Claimant could dress herself. She stated Claimant told her she did have trouble putting on a bra at times, but she could do so.
- 7) **Grooming:** The WVMi nurse rated the Claimant at Level 1, "Self/Prompting" and wrote "[Claimant] washes her hair while she is in the shower and can comb/brush her own hair. She states she shaves her own underarms and legs and can apply deodorant to herself. She states she applies lotion to herself and states she uses lots of lotion as she has dry skin. She states she clips her own fingernails and toenails." Department's witness testified that during the PAS and during this hearing, Claimant did not provide specific information as to what difficulties she had with grooming. The witness added that during the PAS, Claimant reported she could groom herself.
- 8) **Walking:** The WVMi nurse rated the Claimant at Level 2, "Supervised/Assistive Device" and wrote "[Claimant] walked independently in the home during the assessment. She does walk with a limp and in our discussion regarding her ability she states she is unsteady with ambulation at times due to polio and CP [cerebral palsy] and she will reach out and steady herself with furniture or objects within the home." Claimant stated that she has fallen many times, and her ability to walk is deteriorating due to her cerebral palsy and polio. Claimant's witness stated that she has observed over the past year Claimant has deteriorated in her ability to walk. The witness added that Claimant walks very slowly and falls frequently. Department's witness stated that in order to be assessed for a deficit in walking, a person would require the assistance of one person to support him or her at all times. She added that during the PAS she observed Claimant walking independently.
- 9) Claimant stated that her condition is deteriorating, and there are many activities of daily living that she cannot perform for herself. Claimant's witness testified that she was present when the PAS was conducted. She stated that Claimant was "having a good day" on the day of the assessment. She stated that she sees a different picture of Claimant because she spends more time with her. She added that she knew Claimant needs more help and that Claimant's condition is deteriorating due to

polio and cerebral palsy. Neither Claimant nor her witness made substantial rebuttals to the Department's testimony and evidence.

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 and Disabled Waiver Program. On her PAS that was performed on August 25, 2011, Claimant obtained three (3) deficits.
- 2) Claimant's representative argued that deficits should have been assessed in the areas of dressing, grooming and walking.
- 3) The Department was correct in its decision not to assess a deficit in the area of dressing. Department's witness testified and recorded on the PAS that Claimant could dress herself although certain articles of clothing were difficult for her.
- 4) The Department was correct in its decision not to assess a deficit in the area of grooming. Department's witness testified that Claimant did not indicate to her that she had any difficulty with grooming. 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 walking. Department's witness testified and recorded on the PAS that she observed Claimant walking independently during the assessment.
- 6) Neither Claimant nor her witness provided testimony or evidence to support a finding that additional deficits should have been awarded on 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 20th Day of December, 2011.

Stephen M. Baisden
State Hearing Officer