



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

December 6, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 6, 2011. Your hearing request was based on the Department of Health and Human Resources' termination of your medical eligibility under the 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 as follows: 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 your hearing fails to reveal that you continue to meet the medical eligibility requirements for the Aged/Disabled Waiver Program, based on the results of your September 12, 2011 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate your medical eligibility for benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BoSS
WVMI
[REDACTED]

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2168

**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 December 6, 2011.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver Program (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 representative
-----, Claimant's witness

Kay Ikerd, Department representative
Teena Testa, Department's witness

It should be noted that the hearing was conducted via telephone.

Presiding at the hearing was Cheryl Henson, State Hearing Officer and member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to terminate the Claimant's medical eligibility for benefits under the Aged/Disabled Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/ Disabled Home and Community-Based Services Manual Section 501.5
- D-2 Pre-Admission Screening (PAS) assessment completed September 12, 2011
- D-3 Notice of Potential Denial dated September 19, 2011
- D-4 Notice of Decision dated October 3, 2011

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver (ADW) Program during the month of September 2011.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), Teena Testa, completed a medical assessment (D-2) on September 12, 2011, in the Claimant's home and determined that she does not meet the medical eligibility criteria for the program. The Claimant's daughter, -----, was also present for the assessment. The nurse testified that the Claimant received two (2) deficits on the Pre-Admission Screening (PAS) assessment. The Department stipulated during the hearing that the Claimant established one (1) deficit each in the areas of grooming and continence, for a total of two (2) deficits.
- 3) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (D-1) – MEMBER ELIGIBILITY, provides in part:

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.

- 4) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (D-1) states in pertinent part:

APS Healthcare/IRG is the contracted entity that is responsibility [sic] for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services.

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
- B. Each applicant/member determined to be medically eligible for ADW services receives an appropriate Service Level that reflects current/actual medical condition and short- and long-term service needs.
- C. The medical eligibility determination process is fair, equitable and consistently applied throughout the State.

- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1, (D-1) Medical Criteria, states in pertinent part:

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.

- 6) During the hearing, the WVMi nurse discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. After listening to the WVMi nurse explain her findings, the Claimant disagreed with her conclusions, and contends that additional deficits should be awarded in the areas of bathing, dressing, vacating a building during an emergency, walking, and medication administration.
- 7) In the area of bathing, the Claimant was rated as being able to bathe with prompting or with no physical assistance. Policy specifies that to receive a deficit for bathing an individual must need at least one-person physical assistance to perform the function. The nurse recorded the following pertinent information during the assessment:

Client states she takes a shower. Client notes she has a shower chair but she does not use it. She notes she has bars she holds onto when she takes her showers. Homemaker does not help her in and out of the shower. Client states she can wash her face, chest, arms and hands. Client states she washes her feet and her legs. She notes she has a long handle brush she uses to wash her back. Client notes the homemaker does not help her with her bathing. She notes she does not like someone in the bathroom with her while she is bathing. ----- does agree with this.

The Claimant's daughter, -----, testified that the Claimant requires someone in the bathroom with her when she bathes because she has a history of falls. She added that she assists the Claimant with washing her feet, back and legs during bathing. She stated that the Claimant cannot bend over without being in danger of falling. Ms. Testa stated that the Claimant told her she could get in and out of the shower unassisted and that she uses a long brush to wash her back. She stated that she reviewed her findings with both the Claimant and -----and that they both agreed with the findings at that time. -----stated that the Claimant has dementia which affected her responses. -----added that she was distracted by the computer during the assessment and did not pay close

attention to what was being said.

In the area of dressing, the Claimant was rated as being able to dress herself with prompting and supervision. Policy specifies that to be assessed a deficit the individual must require at least one-person physical assistance. The WVMi nurse documented the following during the PAS assessment:

Client states she puts her shirts on herself. She denies the homemaker helping her with putting her shirts on. She notes she keeps her buttons buttoned and states she puts her button up shirts on like a tee shirt. Client states she does not need help getting her bras on. She notes she turns her bras to the front and snaps them and then turn to the back. Client notes she puts her own pants and hose on herself. Homemaker does not help her with putting her shoes and her socks on. She states she can do her dressing all by herself. ----- did not object to what the client was saying.

-----stated again that she did not pay attention during the assessment and that she was busy with a computer at the time. She stated that the Claimant requires physical assistance with dressing. She added that she has to put the Claimant's sock on for her and tie her shoes. She added that she fastens the Claimant's bras. She added that the Claimant sometimes says the wrong thing due to the dementia. -----stated that she does not recall the nurse asking her if she agreed with her findings.

In the area of orientation, the Claimant was rated as being oriented. Policy specifies that to be assessed a deficit an individual must be totally disoriented or comatose. The nurse documented the following during the assessment:

Client states her name is -----, Client aware of her address and her telephone number. [sic] Client aware of her date of birth. [sic] Client states it is the 9th month of yr. 2011. Client states it is morning. President-Obama.

The Claimant's representative, -----, is also her Case Manager. -----stated that the Claimant answers incorrectly to questions at times. -----stated that she must tell the Claimant the date several times throughout the day or she will not be able to recite it. She added that the Claimant stays in her home all the time because she would become much disoriented if she leaves it.

In the area of vacating a building during an emergency, the Claimant was rated as being able to vacate a building in this situation "with supervision." Policy specifies that to receive a deficit in this area, the Claimant would need to be physically or mentally unable to vacate the building. The nurse recorded the following pertinent information during the assessment:

In the event of an emergency member states she feels she could get out of the building. She notes she has 2 windows as her fire escape and she would fall out of the window if need be. She does reside on the

first floor of apartment building and feels she could get out of the home. ----- [Claimant's daughter ██████] states she feels in a real emergency [sic] she would need help. ----- states if she had someone to tell her where to go she could get out of the home.

The Claimant is diagnosed with dementia. -----stated that the Claimant would fall if she tried to leave her home in a hurry. She added that there have been emergency situations at the complex where the Claimant lives and that she has had to go there and physically lead her out of the building. She added that the Claimant also would need to be calmed down.

In the area of walking, the Claimant was rated as needing supervision or an assistive device. Policy specifies that an individual must need at least one-person assistance to receive a deficit. The nurse documented the following on the date of the assessment:

Client meet [sic] me at the door. Her gait was steady. Client notes there are times she does get dizzy and will hold onto the furniture. She walked into her bedroom and back. She walked to the door and back. No difficulty with her walking was noted. Gait steady.

-----states that the Claimant walks "a little" but added that she helps her because she has a weak left leg which drags. She added that the Claimant uses a cane at times, and that she has fallen on several occasions within her home.

In the area of medication administration, the Claimant was rated as being able to administer her medications with prompting and supervision. Policy specifies that to receive a deficit in this area an individual must be physically or mentally unable to administer their medications. The nurse documented that the Claimant "has to be reminded to take her meds."

-----stated that she prepares the Claimant's medication and puts it in her hand and that the Claimant can usually take the medication from that point. She stated that she occasionally drops her medication. Ms. Testa stated that -----stated during the PAS assessment that the Claimant needs reminding and set-up for medication administration.

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 (ADW) Program.
- 2) The Claimant received two (2) deficits during the September 2011 PAS assessment, in the areas of grooming and continence. She must be assessed three (3) additional deficits in order to be determined medically eligible for the program. The Claimant contested the ratings she received in the areas of bathing, dressing, orientation, vacating, walking, and medication administration.
- 3) The evidence and testimony regarding bathing is not sufficient to support the award of a deficit. The Claimant clearly indicated that she could perform the function without physical

assistance. [REDACTED] testimony to the contrary is given little weight because she was present at the time of the assessment and did not voice her disagreement at that time.

- 4) The evidence and testimony regarding dressing is not sufficient to support the award of a deficit. The Claimant again clearly reported that she could perform the function without physical assistance. [REDACTED] testimony to the contrary again is given little weight because she was present for the assessment and did not voice her disagreement at that time.
- 5) The evidence and testimony regarding orientation is not sufficient to support the award of a deficit. The Claimant clearly was functioning on the date of the assessment and knew her name, address, telephone number, and the president. Although -----stated that the Claimant is reminded of the date periodically throughout her day, the Claimant clearly was not totally disoriented or comatose which is required for a deficit in this area.
- 6) The evidence and testimony regarding vacating a building during an emergency does not support the award of a deficit. Both the Claimant and -----clearly reported that the Claimant could exit her home under these circumstances with prompting and supervision. Although ----- testified otherwise during the hearing, she did not provide the information to the Department during its assessment process.
- 7) The evidence and testimony regarding walking does not support the award of a deficit. The Claimant demonstrated during the assessment that she could walk without the physical assistance of another individual. The testimony during the hearing also supports that the Claimant can walk with assistive devices alone.
- 8) The evidence and testimony regarding medication administration does not support the award of a deficit. The Claimant and -----both reported during the assessment and during the hearing that the Claimant can take her medications once they are placed in her hand. Although ----- stated that she forgets to take her medication at times, she also stated that she can lift her medication to her mouth once it is placed in her hand.
- 9) As result of the above conclusions, the Claimant has established no additional deficits and has not established medical eligibility for the Aged/Disabled Waiver program.
- 10) The Department was correct in its decision to terminate medical eligibility in the Aged/Disabled Waiver program based on the results of the September 2011 PAS.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's medical eligibility under the Title XIX Aged/Disabled Waiver (ADW) Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of December, 2011.

**Cheryl Henson
State Hearing Officer**