



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

January 5, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 4, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to terminate 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 reveals that you do not meet the medical eligibility requirements for the Aged/Disabled Waiver Program.

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

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Regina Bleigh, Sutton, WV
Kay Ikerd, RN, WV Bureau of Senior Services
Amy Bentley, [REDACTED] Sutton, WV

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to terminate Claimant's Medicaid eligibility for the Aged and Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community-Based Services Manual Section 501
- D-2 Pre-Admission Screening (PAS) assessment conducted on September 22, 2010
- D-3 Notice of Potential Denial dated September 27, 2010
- D-4 Notice of Denial dated October 14, 2010

VII. FINDINGS OF FACT:

- 1) The Claimant's eligibility for the Title XIX Aged and Disabled Waiver Program was terminated on October 14, 2010. (Exhibit D-4.)
- 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 a yearly pre-admission screening or PAS (Exhibit D-2) on September 22, 2010 in the Claimant's home and determined that she did not meet the medical eligibility criteria for the Program. She testified that the Claimant received no deficits on the PAS assessment.
- 4) The Department sent the Claimant's case management agency, [REDACTED] of Sutton, WV, a Notice of Potential Denial (Exhibit D-3) on September 27, 2010. The form explained that if Claimant or his representatives believed there was additional information regarding his medical condition that was not considered, they should submit it within the next two weeks to WVMI.
- 5) The Department sent the Claimant a Notice of Denial (Exhibit D-4) dated October 14, 2010. The notice was addressed to Claimant and mailed to -----, -----.
- 6) Claimant's representative, her sister, stated during the hearing that she was present for the PAS. She testified that she felt her sister should have received deficits in the areas of eating, dressing, grooming, continence, orientation, walking and transferring.
- 7) **Eating** is addressed within the area of the PAS listed as Item #26, Functional Abilities which includes instructions to "indicate the individual's functional ability in the home for each item listed therein." The WVMI nurse rated the Claimant at a Level 1, "Self/ Prompting," meaning she is capable of performing this activity by herself, but someone may need to prompt her to do so. The nurse recorded the following pertinent information on the PAS:

[Claimant] states she can feed herself and cut up her own foods.
Denies need [homemaker] assistance to cut up foods including meat.

- 8) **Dressing** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMI nurse rated the Claimant at a Level 1, "Self/ Prompting." The nurse recorded the following pertinent information on the PAS:

[Claimant] states she does not need help getting dressed. She states she puts her right arm in the sleeve first and then puts the shirt over her head and [then] the left arm. Inquired about immobility of right arm and she states she is able to get her arm through without help. She states she can get her pants on without help as well as her shoes and socks. Homemaker RN inquired if she could button buttons and

[Claimant] acknowledged that she could. Sister Homemaker states she cannot fasten a bra but wears a sports bra now and [Claimant] states she can get a sports bra on without help. She denies needing any assistance from homemaker for dressing.

- 9) **Grooming** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMi nurse rated the Claimant at a Level 1, "Self/ Prompting." The nurse recorded the following pertinent information on the PAS:

[Claimant] washes her hair in the shower. Inquired about limited mobility with her shoulders and she states she bends her head forward so she can reach her head with both hands and washes it that way. She states she can comb her hair as well. [Claimant] states she puts lotion on herself and states mainly she just puts it on her arms and legs. [Claimant] states she files or clips her own toenails and fingernails. She states she does not need assistance for either. [Claimant] has upper denture and partial on the bottom and states she takes care of her own teeth. She denies needing any assistance from homemaker for grooming.

- 10) **Continence** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMi nurse rated the Claimant at a Level 2, "Occasionally incontinent," meaning she does have occasional accidents. No deficit is awarded at Level 2 for this ability. The nurse recorded the following pertinent information on the PAS:

[Claimant] states she has occasional bladder incontinence. States incontinence with urine may occur [once] a month. Homemaker and [Claimant] state it used to be more of a problem and used to have more frequent accidents and she had disposable underwear . . . They both state incontinence has improved a lot and she no longer uses them. [Claimant] reports no accidents with her bowels.

- 11) **Orientation** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMi nurse rated the Claimant at a Level 1, "Oriented," meaning she is aware of time, place and person. The nurse recorded the following pertinent information on the PAS:

[Claimant] is alert and oriented x three. She knows her address, [date of birth], Social Security number and who the President of the U.S. is. In discussing orientation she reports episodes of disorientation after her brain surgery which was two years ago but none in the past year. Sister reports she does have short term memory problems but agreed with [Claimant] that only time she can recall her being disoriented was after her surgery.

- 12) **Transferring** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMi nurse rated the Claimant at a Level 1, "Independent," meaning she is capable of performing this function by herself. The nurse recorded the following pertinent information on the PAS:

[Claimant] can transfer from a seated position without assistance. She

got up several times during visit and showed no difficulty with transferring.

- 13) **Walking** is addressed within the area of the PAS listed as Item #26, Functional Abilities. The WVMI nurse rated the Claimant at a Level 1, "Independent." The nurse recorded the following pertinent information on the PAS:

[Claimant] ambulates in home independently without assistance. She got up and walked around home several times during visit. She did not use any type of device and did not steady herself with any furniture, walls or countertop.

- 14) Claimant's representative stated during the hearing that while she was present for the PAS assessment, she was not made aware of her right to interject her own opinions into Claimant's responses to the nurse reviewer's questioning. She also testified that the nurse reviewer made no attempt to ascertain whether or not Claimant was actually able to perform the various functional abilities, the reviewer merely asked Claimant if she could know who the President was, if she could dress herself, and similar questions. Department's witness, the nurse reviewer who conducted the PAS, strongly disagreed with these statements. She responded that Claimant's representative made many statements and contributions to her inquiries, which she recorded on the PAS. She also testified that she based her assessment of Claimant's functional abilities on her observations as well as Claimant's responses to her questions. Neither Claimant's representative nor her witness made a substantial rebuttal to the findings of the PAS.

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 September 22, 2010, Claimant was assessed with no deficits.
- 2) The Department properly notified the Claimant by sending a Potential Denial Notice to her Case Management Agency on September 27, 2010. No additional information was provided during the two-week timeframe awarded Claimant in the Potential Denial Notice.
- 3) Claimant received no deficits in September 2010 in conjunction with her Aged/Disabled Waiver Program medical eligibility review. Neither Claimant's representative nor her witness was able to offer substantive evidence that would result in Claimant receiving deficits.
- 4) The required five (5) deficits have not been established to meet medical eligibility criteria for the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate Claimant's medical eligibility under the 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 5th Day of January, 2011.

**Stephen M. Baisden
State Hearing Officer**