



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

May 4, 2011

RE: ----- Aged/Disabled Waiver Termination

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 3, 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 meet the medical eligibility requirements for the Aged/Disabled Waiver Program based on the results of your September 2010 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate your 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 & HUMAN RESOURCES
BOARD OF REVIEW**

-----,

Claimant,

Vs.

Action Number: 10-BOR-2192

**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 May 3, 2011 on a timely appeal filed November 18, 2010.

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's representative

-----, Claimant's witness

Kay Ikerd, Department representative

Teena Testa, Department's witness

It should be noted that the Department and its witness participated by conference call.

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 Home and Community-Based 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
- D-2 Pre-Admission Screening (PAS) assessment completed September 24, 2010
- D-3 Notice of Potential Denial dated September 27, 2010
- D-4 Termination notice dated October 14, 2010

Claimant's Exhibits:

- C-1 Faxed information dated January 4, 2011, includes Homemaker Worksheets and Medical records
- C-2 Plan of Care for September 2010

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing a re-evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of September 2010.
- 2) A nurse employed by the West Virginia Medical Institute (WVMI), Teena Testa, completed a medical assessment (D-2) on September 24, 2010 in the Claimant's home and determined that she no longer meets the medical eligibility criteria for the program. The nurse testified that the Claimant received four (4) deficits on the Pre-Admission Screening (PAS) assessment. The parties stipulated to the fact that the Claimant has established a total of four (4) deficits in the areas of vacating a building in an emergency, bathing, grooming, and bladder continence. The Claimant must establish a total of five (5) deficits in order to be medically eligible for the Aged/Disabled Waiver Program.
- 3) The Department sent the Claimant's listed case management agency, [REDACTED] a Notice of Potential Denial (D-3) on September 24, 2010. The form explained that if the Claimant believed she had additional information regarding her medical condition that was not considered, it should be submitted within the next two (2) weeks to WVMI.

- 4) No additional information was submitted during the two (2) week timeframe after the September 24, 2010 notice. The Department sent the Claimant a Notice of Denial (D-4) dated October 14, 2010, and the Claimant requested a hearing on November 18, 2010. It should be noted that this hearing was previously scheduled to be heard on January 11, 2011, March 1, 2011, and April 21, 2011, but was continued for various reasons.

5 Aged/Disabled Home and Community-Based Services Manual Section 501.3 (D-1) – MEMBER ELIGIBILITY AND ENROLLMENT PROCESS:

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.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 501.3.1.1 states in pertinent part:

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 ADW 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.

- 7) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 (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.

- 8) 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 an additional deficit should be awarded in the area of “dressing”.
- 9) In the area of dressing, the Claimant was rated as “self/prompting”, which was explained as being able to perform the activity by one’s self, with prompting. The WVMi nurse testified that she conducted a “mini assessment” during the visit and determined that the Claimant was able to hold her arms outstretched, and able to hold her hands above her head. She added that the Claimant was able to take her left hand and touch her right shoulder, as well as take her right hand and touch her left shoulder. Further, she stated that the Claimant’s hand grips were equal and strong bilaterally. She also recorded the following on the PAS:

Client notes she did dress herself today. Client was able to put her shirt on herself and button the shirt herself. Client is able to button her buttons. Client notes she leans against the sink and put her pants on. Client also had nylons on. Client states she slides her shoes on because they are so easy. Client had tennis shoes with Velcro on. Client notes she does put her socks on and fights to get her socks on. She notes she wears the support panty hose and states she had to do this herself. She notes she has to twist and turn to get her panty hose on. Sandy informed the client that that was the purpose of the homemaker to help her get those things on. Client notes she is aware of this. She notes she does wear bras and she snaps them in the front and turns them to the back. Client did have a button up shirt she states she put on herself, she also had pants, had compression stockings she notes she puts on herself. She also put her shoes on herself.

- 10) The WVMi nurse also recorded on the PAS that when bathing, the Claimant told her that someone else washes her feet, legs, and back. She also recorded that the Claimant noted that when grooming, someone else washes her hair in the sink, and that someone else clips her toenails. She noted that the Claimant was in the hospital from September 10, 2010 until September 16, 2010 due to a mini-stroke and hypertension. The nurse also noted that the Claimant experiences shortness of breath, and that she has arthritis.

She added that she observed the Claimant remove and fold “sheets” from her couch in order that she could sit on the couch during the assessment. The nurse testified that she believes her findings on the date of the assessment support a rating of self/prompting in the area of dressing.

- 11) The Claimant contends that she should have been rated as requiring “physical assistance” in the area of dressing, because she requires, at times, physical assistance with her dressing. If awarded a rating of requiring “physical assistance” for dressing, the Claimant would establish an additional one (1) deficit and thereby meet the policy requirements for establishing medical eligibility for the Aged/Disabled Waiver Program.
- 12) The Claimant’s case manager, -----, testified that she was present during most of PAS assessment interview. She stated that she recalls interrupting when the Claimant was being evaluated in the area of dressing. She stated that she remembers specifically asking the Claimant whether she ever requires physical assistance with her dressing, and that she recalls the Claimant answering “yes” in front of the nurse. She stated that the reason the Claimant needs physical assistance for this activity is because she has problems keeping her balance and due to the amount of time she requires at times to completely dress. She stated that when the nurse reviewed her findings with those present, she was not clear as to how the nurse determines each rating, and as such, she was unable to determine whether the actual rating of self/prompting was correct. She stated that she agreed with the nurse that the Claimant made the comments the nurse reviewed. Although the nurse recalled the case manager interrupting during the assessment of dressing, she did not recall the Claimant indicating that at times she requires physical assistance to dress herself.
- 13) [REDACTED] testified that she reviewed the “Plan of Care” form, which is a form utilized by her agency to outline all actions the homemaker is directed to provide for the Claimant while performing homemaker duties in the Claimant’s home. She stated that the Plan of Care (C-2) for the period in question outlines that the Claimant is to be physically assisted by the homemaker when dressing. She added that the homemaker usually indicates on the Homemaker Worksheet that she physically assists the Claimant daily with dressing.
- 14) Homemaker Worksheets and Plan of Care forms for the month of September 2010 (C-1, C-2) indicate that the homemaker was directed to, and did, regularly assist the Claimant physically with dressing during the month of the assessment.
- 15) Medical records from her September 2010 hospitalization show that she was hospitalized for high blood pressure and Transient Ischemic Attack (TIA).

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. Policy stipulates that an individual must require physical assistance with dressing in order to meet the medical criteria necessary to award a deficit in the functional area of dressing.

- 2) The Claimant received four (4) deficits in September 2010 in conjunction with her Aged/Disabled Waiver Program re-evaluation.
- 3) The Claimant contended that an additional one (1) deficit should be awarded in the area of dressing.
- 4) The Claimant was able to show evidence to support a deficit award for dressing. The Claimant's case manager's testimony is found to be credible in that she recalled specifically asking the Claimant, while in the nurse's presence, if she sometimes needed physical assistance with dressing, as well as her recollection of the Claimant's response to the question indicating that she did need physical assistance at times in order to dress herself. The written evidence also supports that the Claimant requires physical assistance with dressing. Both the Plan of Care and Homemaker Worksheets for the period in question attest to this need and that the homemaker was assisting the Claimant with dressing. Additionally, the nurse's comments on the PAS regarding the Claimant's need for physical assistance in her grooming and bathing needs are consistent with her also needing physical assistance in dressing. The comments document that the Claimant requires physical assistance to wash her hair, feet, legs and back, as well as her need of physical assistance to clip her toenails.
- 5) The Department was not correct in its decision to terminate continued medical eligibility in the Aged/Disabled Waiver program based on the results of the September 2010 PAS.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal to terminate the 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 4th Day of May, 2011.

**Cheryl Henson
State Hearing Officer**