



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General**

Board of Review
P.O. Box 1736
Romney, WV 26757

**Earl Ray Tomblin
Governor**

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

March 10, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 3, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Medicaid eligibility under 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 (HCB) Title XIX Waiver Services Program is based on current policy and regulations. These regulations provide that the 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]. Additionally, an individual must have five (5) deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the Aged and Disabled Waiver program.

The information which was submitted at your hearing revealed that you do meet the medical eligibility requirements for the Aged and Disabled Waiver program.

It is the decision of the State Hearing Officer to Reverse the proposal of the Department to terminate your medical eligibility for the Aged and Disabled Waiver program.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, BoSS
[REDACTED]

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

-----,

Claimant,

v.

Action Number: 10-BOR-2424

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

It should be noted here that the Claimant's benefits under the Aged and Disabled Waiver program continue at the previous level of determination pending a decision from the State Hearing Officer.

It shall also be noted that the hearing was originally scheduled for February 1, 2011 and rescheduled at the discretion of the State Hearing Officer due to inclement weather.

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

-----, Case Manager

Kay Ikerd, RN, Bureau for Senior Services (BoSS)

Lee Ann Beihl, RN, West Virginia Medical Institute (WVMI)

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department is correct in its proposal to terminate the Claimant's eligibility for benefits and services under the Aged and Disabled Waiver Program.

V. APPLICABLE POLICY:

Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening Assessment dated October 5, 2010
- D-3 Notice of Potential Denial dated October 19, 2010
- D-4 Letter dated October 30, 2010 from [REDACTED] WVU Healthcare
- D-5 Notice of Decision dated November 9, 2010

VII. FINDINGS OF FACT:

- 1) On October 5, 2010, the West Virginia Medical Institute (WVMI) nurse medically assessed the Claimant for her continued eligibility for the Aged and Disabled Waiver Program using Exhibit D-2, Pre-Admission Screening Assessment (PAS).
- 2) Ms. Lee Ann Beihl, WVMI assessing nurse testified that the assessment was completed with Claimant. During the assessment, Ms. Beihl identified the Claimant's functional deficits as bathing, grooming, and dressing.
- 3) On October 19, 2010, the Claimant was issued Exhibit D-3, Notice of Potential Denial. This exhibit documents in pertinent part:

At your request, a WVMI nurse recently visited you and completed an assessment to determine medical necessity for Medicaid's Aged and Disabled Waiver Program.

Medical necessity is based on information you provided to the nurse, which was documented on a form called the Pre-Admission Screening Form or PAS.

To be eligible for benefits you must be deficient in at least 5 of 13 critical areas as mandated in the Medicaid Program Regulations, Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, Chapter 501.3.2.

Based on your PAS, you have deficiencies in only 3 areas, bathing, grooming, and dressing.

Additionally, this notice allowed the Claimant an opportunity to submit additional information regarding her medical condition to WVMH within a two week timeframe from the date of the issuance of the notice.

- 4) On November 9, 2010, the Claimant was issued Exhibit D-5, Notice of Denial, informing her that medical eligibility could not be established and the required amount of deficits could not be awarded on the PAS. This notice documents in pertinent part:

Your request for benefits under the Home and Community Based Aged/Disabled Waiver Program has been Terminated/Denied.

An evaluation of your current medical condition indicates that you are not entitled to services under the A/D Waiver Program. A decision has been made to terminate/deny your homemaker and case management services. You have the right to dispute this decision and ask for a hearing.

Reason for decision: Eligibility for the Aged/Disabled Waiver Program requires deficits in at least 5 of the health areas below. Your PAS (Pre-Admission Screening Form), indicated deficiencies in 3 areas-bathing, grooming, and dressing.

- 5) -----, the Claimant's Case Manager from the [REDACTED] testified that additional deficits should have been awarded in the areas of Vacating During an Emergency and Walking.

The following address the contested areas:

Walking-----indicated that the Claimant cannot ambulate and she utilizes a power chair for all of her mobility with the aid of crutches to stand and pivot. Ms. Beihl indicated that she did not witness the Claimant walk during the assessment, but assessed the Claimant as a Level 2 supervised/Assistive Device and documented in Exhibit D-2, that the Claimant was "Unable to walk more than 20 feet with crutches wearing bilateral LE braces; uses power chair in and out of the home" based on information related from the Claimant. The Claimant recalled stating this to Ms. Beihl and acknowledged that she overstated her abilities and stated that she only uses her crutches to stand up. The Claimant testified that she believes that she is still able to function at a higher capacity, when in reality she is not. The Claimant stated that she must maneuver her power chair into the bathroom in order to utilize the facilities and stated that she

uses a crutch to stand and hold on to the bathroom door and must hold on the sink to get to the commode. Additionally, the Claimant stated that her kitchen is very small and she has everything in arms reach to minimize ambulation.

Testimony indicated that the Claimant deals with challenges in the functional area. During the assessment, the assessing nurse did not observe the Claimant's capacity to ambulate and relied on the reported information from the Claimant concerning her inability to walk more than twenty feet with crutches and that she utilizes a power chair inside the home. The Claimant's testimony, that she is unable to ambulate without assistance or use of her power chair, is credible in that the Claimant would require hands on assistance to ambulate in the home; therefore, a deficit in the area of walking can be awarded.

Vacating during an Emergency-----testified that the Claimant would not be able to vacate her residence if she was not in her power chair. -----acknowledged that the Claimant resides in a handicap accessible apartment, but there are no large knobs to assist in opening doors, etc. The Claimant stated that if there was an emergency, specifically at the night, it would take her at least twenty minutes to place her braces on her legs before she could evacuate her residence. Ms. Beihl documented in Exhibit D-2 in regards to the Claimant's vacating as, "requires situational assistance for doorways with a power chair" and assessed the Claimant as able to vacate with supervision. Ms. Beihl indicated that the Claimant would require assistance when using her power chair.

The Claimant's testimony concerning her inability to vacate, coupled with her testimony concerning her inability to ambulate, is credible in which she would require assistance to open doors to vacate her residence. Additional testimony indicated that the Claimant would experience a greater difficulty in vacating during the night; therefore, an additional deficit can be awarded in the contested area.

6) Aged/Disabled Home and Community-Based Services Manual Section 501 (D-1) - Program Eligibility for Client:

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.

7) Aged/Disabled Home and Community-Based Services Manual Section 503.1.1 – 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 A/DW 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.

- 8) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.3.2 Medical Criteria: 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that in order to be determined eligible for services under the Aged and Disabled Waiver program, an individual must be deficient in at least five (5) health areas on the Pre-Admission Screening assessment (PAS).
- 2) Evidence presented during the hearing revealed that the Claimant was awarded deficits in the areas of bathing, grooming, and dressing.
- 3) Evidence presented during the hearing established additional functional deficits in the areas of walking and vacating during an emergency. The Claimant's total number of deficits awarded is five; therefore, the Department was incorrect in its decision to terminate the Claimant's Aged and Disabled Waiver benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to terminate the Claimant's medical eligibility for benefits and services under 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 _____ day of March, 2011.

Eric L. Phillips
State Hearing Officer