



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

March 4, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 15, 2011. Your hearing request was based on the Department of Health and Human Resources' denial 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 reveals that you do not meet the medical eligibility requirements for the Aged/Disabled Waiver Program, based on the results of your October 13, 2010 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to deny 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

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

-----,

Claimant,

v.

Action Number: 10-BOR-2425

**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 February 15, 2011 on a timely appeal filed November 30, 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, Representing herself
-----, Claimant's witness

Kay Ikerd, Bureau of Senior Services
Brenda Myers, Registered Nurse, West Virginia Medical Institute, Department witness

It should be noted that the Department 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 deny 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 October 13, 2010
- D-3 Notice of Potential Denial dated October 19, 2010
- D-4 Notice of Denial dated November 17, 2009
- D-5 Medical information from Primary Care Systems, Inc.

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual re-evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver Program during the month of October 2010.
- 2) The West Virginia Medical Institute (WVMI) nurse, Brenda Myers, completed a medical assessment (D-2) on October 13, 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 two (2) deficits on the Pre-Admission Screening (PAS) assessment in the areas of vacating in an emergency, and grooming.
- 3) The Department sent the Claimant's listed case management agency, [REDACTED] a Notice of Potential Denial (D-3) on October 19, 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 weeks to WVMI.
- 4) The Department acknowledged receiving additional information (D-5) from the Claimant on or about November 3, 2010. The Claimant's nurse practitioner submitted a letter and medical notes regarding the Claimant, in which she indicated that the Claimant requires an assistive device in order to walk, that the Claimant requires the use

of a “grab bar” in order to bathe unassisted, and that she requires someone to set up her medications for her.

- 5) The WVMi nurse testified that, as a result of the new information, she was able to change the medication administration needs to “requires setup”, which did not allow for additional deficits to be awarded. She explained that the Claimant would need to be totally unable to administer her medications in order to receive a deficit in this area. She added that the new information provided regarding walking and bathing did not change the rating on the PAS assessment because the Claimant was already assessed as needing a “supervised assistive device” for both walking and bathing. In order to be awarded a deficit for walking and bathing, the Claimant would need to require physical “hands on” assistance of at least one person in order to perform the activity.
- 6) The Department sent the Claimant a Notice of Denial dated November 17, 2010, and the Claimant requested a hearing on November 30, 2010.
- 7) During the hearing, the WVMi nurse discussed her findings in each relevant category and explained her reasons for rating the Claimant in each area. After listening to the WVMi nurse explain her findings, the Claimant was unable to provide any area in which she believed an error had been made.
- 8) The Claimant testified that she agreed with the nurses findings for that specific period of time; however, she added that her health had deteriorated since the time the PAS was completed and she now required more assistance. The Claimant did not produce an argument for any additional deficits for the period of time surrounding the completion of the October 2010 PAS.
- 9) 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.

- 10) 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.

- 11) 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 B (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 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 need at least one person to physical assistance them in the categories of walking and bathing in order to be awarded a deficit in those areas. In the area of medication administration, policy requires that an individual must be unable to administer his or her own medications.
- 2) The Claimant received two (2) deficits in October 2010 in conjunction with her Aged/Disabled Waiver Program annual re-evaluation in the areas of grooming and vacating a building.

- 3) The Claimant made no argument regarding additional deficits for the period of time surrounding the October 2010 PAS assessment. The only evidence submitted in support of additional deficits is the additional evidence (D-5) provided by the Claimant's nurse practitioner in the form of a letter and medical notes. This evidence is not sufficient to allow awards for additional deficits. The evidence does not support that the Claimant requires at least one person to physically assist her in the areas of walking and bathing, and it does not show that the Claimant is unable to administer her medications; it shows that she requires someone to set up her medications, but does not show that she cannot take those medications herself once they are set up. As such, the required five (5) deficits have not been established.
- 4) The Department was correct in its decision to deny continued medical eligibility in the Aged/Disabled Waiver program based on the results of the October 2010 PAS.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to deny 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 March, 2011.

**Cheryl Henson
State Hearing Officer**