



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

May 12, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 10, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical 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 Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged and 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 and Disabled (HCB) Services Manual Section 501]

Information submitted at your hearing reveals that you do not meet the medical eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to deny your application for the Aged and Disabled Waiver Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
Kay Ikerd, RN, WV Bureau of Senior Services

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

-----,  
**Claimant,**

v.

**Action Number: 11-BOR-336**

**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 via telephone conference call on May 10, 2011, on a timely appeal filed December 3, 2010. This hearing was originally scheduled for March 22, 2011, but was rescheduled at Claimant's request.

**II. PROGRAM PURPOSE:**

The Aged and Disabled Waiver (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 niece and representative

Brian Holstine, WV Bureau of Senior Services, Department's representative  
Brenda Myers, RN, West Virginia Medical Institute, Department's witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed all participants under oath at the beginning of the hearing.

**IV. QUESTION TO BE DECIDED:**

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

**V. APPLICABLE POLICY:**

Aged and Disabled Home and Community-Based Services Manual Section 501.

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged and Disabled Home and Community-Based Services Manual Section 501.3.
- D-2 Pre-Admission Screening (PAS) assessment conducted on October 18, 2010.
- D-3 Denial letter from the West Virginia Medical Institute (WVMI) dated November 12, 2010.
- D-4 Additional information from Claimant's physician, dated November 3, 2010.

**VII. FINDINGS OF FACT:**

- 1) Claimant's applied for the Title XIX Aged and Disabled Waiver Program and her application was denied on November 12, 2010. (Exhibit D-3.)
- 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 pre-admission screening or PAS (Exhibit D-2) on October 18, 2010 in the Claimant's home. She stated that Claimant, Claimant's representative, Claimant's companion and a neighbor were present. She added that she subsequently determined Claimant received four (4) deficits on the PAS assessment and therefore did not meet the medical eligibility criteria for the Program.
- 4) The Department sent the Claimant a Notice of Denial dated November 12, 2010. (Exhibit D-3.) The notice was addressed to Claimant and mailed to -----, -----.
- 5) Claimant's representative, her niece, stated during the hearing that she was present for the PAS. She testified that she felt Claimant should have received deficits in the areas of walking and continence.
- 6) **Walking** 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 2, "Supervised/Assistive Device," meaning she is capable of performing this activity with someone watching her, with the aid of a device such as a cane or a walker, or by holding onto objects such as furniture. On the "Nurse's overall comments" section of the PAS, the nurse wrote, "[Claimant] walked independently during visit. She states she often steadies herself with walls and furniture in the home. She does not have a cane or walker." Claimant's representative stated that Claimant's physician prescribed a cane for Claimant, and a copy of his prescription was sent to WVMi.
- 7) Department's witness testified that on November 3, 2010, The WVMi received additional information regarding Claimant's PAS. This information was a note written by Claimant's physician on a prescription pad. (Exhibit D-4.) It read, "Cane. [Diagnosis]: Compression [fracture] of spine." Department's witness also testified that if Claimant needed to use a cane to walk, this would not be a sufficient reason to assess Claimant with a deficit for walking. She testified that in order to receive a deficit for walking, Claimant would need to be assisted by another person at all times when walking.
- 8) **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,"

- 9) Claimant's representative testified that Claimant's ability to walk has deteriorated and her incontinence has become worse. She stated that it has become very difficult to take Claimant to physician's appointments and other outings due to her inability to move her legs after being seated in a vehicle.
- 10) Department's representative argued that if Claimant's medical condition or functional abilities have worsened, this would have no bearing on the October 18, 2010, PAS. He stated that the PAS represents a snapshot of Claimant's health situation on the day it was performed, and as such, changes in her condition since the PAS was completed cannot be used to assess Claimant with additional deficits.

#### **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 October 18, 2010, Claimant was assessed with four (4) deficits.
- 2) The Department was correct in its decision to not award a deficit for walking. Claimant received a rating of "Level 2 – Supervised/Assistive Device" for this functional ability. Testimony and evidence revealed that Claimant's physician had prescribed a cane for Claimant, but this does not justify rating Claimant at "Level 3 – One Person Assist."
- 3) The Department was correct in its decision to not award a deficit for continence. On the PAS that was completed on October 18, 2010, the nurse/reviewer wrote that Claimant reported no more than one or two bladder accidents per week, which met the definition for "Level 2 – Occasionally Incontinent."
- 4) Information presented during the hearing that indicates Claimant's functional ability of urinary continence may have deteriorated since the October 2010 PAS has no bearing on the decision not to assess Claimant with a deficit for continence at that time.
- 5) Claimant's representative was not able to offer substantive evidence that would result in Claimant receiving an additional deficit.
- 6) 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 deny Claimant's application to 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 12<sup>th</sup> Day of May, 2011.**

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**Stephen M. Baisden  
State Hearing Officer**