



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

April 8, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law for your hearing held on April 5, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Medicaid 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 the hearing reveals that your medical condition at the time of the assessment failed to demonstrate that you continue to need a sufficient number of services and the degree of care required to medically qualify you for the Aged/Disabled Home and Community Based Waiver Services Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
BoSS / WVM
-----, CM, [REDACTED]

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

-----,

Claimant,

v.

Action Number: 11-BOR-628

**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 April 5, 2010 on a timely appeal filed January 19, 2011.

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

-----, Claimant's Daughter/Homemaker

-----, RN [REDACTED]

-----, CM, [REDACTED]

Kay Ikerd, RN, BoSS (participated telephonically)

Debra Lemasters, RN, WVMI (participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to terminate the Claimant's benefits and services provided through the Medicaid Aged/Disabled Home and Community-Based Waiver Services Program.

V. APPLICABLE POLICY:

Medicaid Aged/Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 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) for Aged/Disabled Waiver Services dated 11/29/10
- D-3 Notice of Potential Denial dated 12/1/10
- D-4 Notice of Termination/Denial 12/20/10

VII. FINDINGS OF FACT:

- 1) On November 29, 2010 the Claimant was evaluated (medically assessed) to determine continued medical eligibility for participation in the Aged and Disabled Waiver Services Program, hereinafter ADW Program [See Exhibit D-2, Pre-Admission Screening (PAS) completed on 11/29/10].
- 2) On or about December 1, 2010, the Claimant was notified of Potential Denial (Exhibit D-3). This notice states, in pertinent part:

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 – Vacate a building, Bathing and Continence.

This notice goes on to advise the Claimant that additional medical information would be considered before a final determination is made if received within two weeks. It should be noted that no additional information was received/reviewed.

- 3) The Claimant was notified that continued medical eligibility could not be established via a Termination/Denial Notice dated December 20, 2010 (Exhibit D-4). This notice states, 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 a 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 – Vacate a Building, Bathing and Continence.

Because you have less than 5 deficits at the level required, your services are being terminated/denied.

- 4) As noted in the previous findings, the Department stipulated that the Claimant demonstrates three (3) deficits but indicated the medical assessment completed in November 2010 fails to identify five (5) functional deficits necessary to establish medical eligibility for participation in the ADW Program. In addition, the Claimant was provided an opportunity to submit additional medical documentation during the two-week period following the Potential Denial Notice (D-3), however, no information was submitted for review.
- 5) The Claimant contends that she remains medically eligible to participate in the ADW Program as she is also demonstrating a functional deficit in Medication Administration, Dressing and Grooming.

The following addresses findings specific to each of the contested areas:

Medication Administration – In order to qualify for a deficit in Medication Administration, the individual must require assistance with placing medications in their hand, mouth, eye, tube, etc... According to Debra Lemasters, RN, WVMI, there must be a physical or mental impairment documented to justify why the individual is unable to administer their medications. Evidence received at the hearing reveals that the Claimant takes her medications by mouth, and while there was testimony to indicate she must sometimes be reminded, this level of assistance (prompting and supervision) does not qualify as a deficit. Based on the evidence, the Claimant was appropriately assessed as requiring prompting and supervision - a deficit was not identified in the area of Medication Administration.

Dressing – Evidence submitted at the hearing reveals that the Claimant advised RN Lemasters during the assessment that she dresses herself. RN Lemasters documented that the Claimant demonstrated the physical range of motion required to dress upper and lower extremities, and testified that she did not have any reason to think the Claimant was unable to dress independently. RN Lemasters cited documentation in Exhibit D-2, page 9 of 10, where she noted that the Claimant’s daughter agreed that her mother dresses herself but when she later stated that she helps her sometimes, the Claimant replied – “You lie no you do not.” While the Claimant and her representatives contend the Claimant was only able to dress herself because she was on Prednisone at the time of the assessment, the Claimant failed to report she was taking Prednisone (It was also noted that Prednisone is not included among the list of medications on page 5 of Exhibit D-2), she indicated she was having a normal day (page 3, Exhibit D-2), and she emphatically denied requiring physical assistance with dressing when she indicated her daughter was lying. Based on the evidence, the Department’s assessment of the Claimant’s functional ability to dress at the time of the assessment was correct. Therefore, a functional deficit cannot be awarded in the area of dressing.

Grooming – Policy dictates that an individual must require hands-on physical assistance from at least one person in order to qualify for a deficit in grooming. The Claimant testified that she requires assistance to get into the bathtub or she cannot wash her hair. -----, RN, [REDACTED] purported that the Claimant has difficulty clipping her toenails and keeping them straight. The Department noted, however, that the Claimant was given a deficit in bathing due to transfer issues and that she washes her hair independently while in the bathtub. The Claimant reported during her assessment that she can clip her toenails independently and demonstrated the physical ability to hold her feet with one hand while reaching her toes with the other hand. No other areas of grooming were contested. The evidence demonstrates that the Claimant was correctly assessed as independent with grooming. As a result, a functional deficit was not established in grooming.

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) Medicaid policy requires that an individual must demonstrate five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program.
- 2) The evidence reveals that the Claimant was awarded three (3) deficits on a PAS completed by WVMi in November 2010 – Vacating a building, Bathing and Continence.
- 3) The evidence submitted at the hearing fails to confirm the Claimant was demonstrating any additional deficits in November 2010.
- 4) Whereas the Claimant was demonstrating only three (3) program qualifying deficits, the Department was correct in its determination that continued medical eligibility for participation in the Aged/Disabled Waiver Program could not be established.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of April, 2011.

**Thomas E. Arnett
State Hearing Officer
Member, Board of Review**