



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

June 18, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 31, 2012. Your hearing request was based on the Department of Health and Human Resources' termination of Medicaid Aged and Disabled Waiver (ADW) Program services based on medical findings.

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 ADW program is based on current policy and regulations. Regulations require that ADW services be granted to only those individuals who have met all eligibility requirements. One of these requirements is that the individual must qualify medically. Eligible individuals are those who qualify medically for nursing facility level of care but have chosen the waiver program as a means to remain in their home, where services can be provided. An individual must have five deficits on the Pre-Admission Screening (PAS) form to qualify medically (Bureau for Medical Services Provider Manual, Chapter 501 – Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services, §501.5.1.1).

The information submitted at your hearing revealed that the Department was correct to award four deficits on your PAS assessment and to terminate ADW services.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate benefits under the ADW Program.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, Department Representative
Angie Hill, West Virginia Medical Institute

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1049

**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 concluded on June 18, 2012, 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 31, 2012, on a timely appeal, filed March 28, 2012.

All persons offering testimony were placed under oath.

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 witness

-----, Claimant's witness

Kay Ikerd, Department representative

Angie Hill, Department witness

Presiding at the Hearing was Todd Thornton, 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 decision to terminate Aged and Disabled Waiver Program services to the Claimant based on medical findings.

V. APPLICABLE POLICY:

Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5 – 501.5.1.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services, §§501.5 – 501.5.1.1
- D-2 Pre-Admission Screening (PAS) form dated March 6, 2012
- D-3 Notice of potential denial dated March 7, 2012
- D-4 Notice of decision dated March 23, 2012
- D-5 PAS form dated January 26, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant is a 59-year-old female recipient of Aged and Disabled Waiver (ADW) Services. Angie Hill, a registered nurse employed by West Virginia Medical Institute (WVMI), completed a Pre-Admission Screening (PAS) assessment (Exhibit D-2) of the Claimant on March 6, 2012, to reevaluate medical eligibility for the program. The Department issued a potential denial notice (Exhibit D-3) on March 7, 2012, and a denial notice (Exhibit D-4) on March 23, 2012. Both notices indicated that only four deficits were awarded and that a minimum of five deficits are required for medical eligibility.
- 2) Kay Ikerd, representative for the Department's Bureau of Senior Services, testified that the applicable policy for this case is from the Bureau for Medical Services Provider Manual, Chapter 501: Aged & Disabled Waiver Services. At §501.5.1.1, this policy (Exhibit D-1) states as follows:

501.5.1.1 Medical Criteria

An individual must have five deficits on the Pre-Admission Screening Form (PAS) to qualify medically for the ADW Program. These deficits are derived from a combination of the following assessment elements on the PAS.

Section	Description of Deficits	
#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	
a.	Eating	Level 2 or higher (physical assistance to get nourishment, not preparation)
b.	Bathing	Level 2 or higher (physical assistance or more)
c.	Dressing	Level 2 or higher (physical assistance or more)
d.	Grooming	Level 2 or higher (physical assistance or more)
e.	Continence, bowel	Level 3 or higher; must be incontinent.
f.	Continence, bladder	
g.	Orientation	Level 3 or higher (totally disoriented, comatose).
h.	Transfer	Level 3 or higher (one-person or two-person assistance in the home)
i.	Walking	Level 3 or higher (one-person assistance in the home)
j.	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 for 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) Ms. Hill testified that based on her March 6, 2012 PAS assessment, she awarded the Claimant deficits in four areas: *dressing, grooming, continence of bladder, and vacating the building in the event of an emergency.*

- 4) Ms. Hill testified that she received a letter from the Claimant's physician after the issuance of the potential denial notice (Exhibit D-3). In response, she requested clarification from the physician. This clarification was not received in time for her to consider the response before the denial notice (Exhibit D-4) was issued to the Claimant. However, upon review of this late additional information from the Claimant's physician, Ms. Hill testified that it would not have affected the outcome of her PAS assessment of the Claimant. Ms. Hill's PAS notes regarding this additional information are as follows:

3/21/12 5:44PM RECEIVED AND REVIEWED ADD'L INFO [sic].
RECEIVED A TYPED LETTER SIGNED BY DR. ----- 3/21/12
STATING MEMBER NEEDS ASSIST WITH BATHING, DRESSING,
AND GROOMING AND IS INCONT [sic] WITH ASSIST TO AND
FROM THE BATHROOM. LETTER STATES MEMBER NEEDS
ASSIST WITH TRANSPORTATION TO DOCTORS APPTS [sic]
AND PUSHING IN THE WHEELCHAIR WHILE SHOPPING,
RUNNING ERRANDS, ETC. RN FAXED A LETTER TO DR. -----
EXPLAINING DRESSING, GROOMING, AND BLADDER INCONT
[sic] WAS ADDRESSED ON THE PAS AND SHE WAS GIVEN A
DEFICIT FOR THOSE AREAS. EXPLAINED ACTIVITIES
OUTSIDE THE HOME IS [sic] NOT CONSIDERED ACCORDING
TO POLICY. RN ASKED DR. ----- TO CLARIFY WITH BATHING
WHAT SHE IS REFERRING TO THAT MEMBER NEEDS
ASSISTANCE WITH DUE TO, AS DOCUMENTED ABOVE UNDER
BATHING, MEMBER REPORTED DURING ASSESSMENT SHE IS
ABLE TO GET IN AND OUT OF THE SHOWER AND CAN WASH
HERSELF WITHOUT ASSIST. MEMBER REPORTED HER
HOMEMAKER ----- DOES NOT ASSIST HER WITH A SHOWER.
PAS REMAINS UNCHANGED AT THIS TIME.

- 5) Three additional areas were proposed by the Claimant or on her behalf: *wheeling*, *bathing*, and *medication administration*.
- 6) The Claimant and her caregiver, -----, both testified that the Claimant requires verbal prompting to remind her to take her medications. Ms. Hill testified that for *medication administration*, a deficit is awarded not when prompting is required but when an individual is actually incapable of taking the medications themselves.
- 7) The Claimant and ----- testified that the Claimant uses a wheelchair in the home. Ms. Hill testified that the Claimant denied wheelchair use in the home when she reported on this area to Ms. Hill on the day of the PAS assessment. Ms. Hill testified that for a deficit to be awarded in the area of *wheeling*, the Claimant would have to not only have to use a wheelchair in the home but require at least situational assistance for that wheelchair use and require at least one-person assistance with *walking*. The Claimant did not dispute the Department's assessment that for walking she requires supervision or an assistive device, but not one-person assistance.

- 8) The Claimant testified that she requires assistance with *bathing*. ----- testified that she helps the Claimant in and out of the shower on the days she is with the Claimant and that the Claimant has fallen when she was not there to help. Ms. Hill testified that she was not told this on the day of the PAS assessment. Ms. Hill made PAS comments regarding bathing at that time, as follows:

BATHING-

MEMBER REPORTS SHE CAN GET IN AND OUT OF THE SHOWER HERSELF. SHE STATES SHE HAS A GRAB BAR TO USE IN THE SHOWER. SHE STATES SHE SITS ON A SHOWER CHAIR. MEMBER STATES SHE WASHES HERSELF WITHOUT ASSIST. MEMBER STATES SHE HAS A SCRUBBER WITH HANDLES ON BOTH ENDS THAT SHE USES TO WASH HER BACK. MEMBER STATES SHE PROPS HER FEET UP ON THE SIDE OF THE BATHTUB TO WASH HER FEET. RN ASKED AGAIN REGARDING THE NEED FOR ANY HANDS ON PHYSICAL ASSIST WITH ANY PART OF BATHING AND MEMBER STATES SHE DOES NOT NEED ASSIST WITH WASHING OR GETTING IN AND OUT AND STATES "I WOULD DO IT IF IT KILLED ME". MEMBER STATES HER HOMEMAKER ----- DOES NOT ASSIST HER WITH A SHOWER.

Regarding her contradictory statements during this hearing and during the PAS assessment in March, the Claimant testified that because of her medications and sleeping habits she was not alert on the day of the PAS assessment and did not respond correctly to Ms. Hill's questions. Ms. Hill testified that the Claimant did not appear to be unable to answer questions, and that she had in fact assessed the Claimant's orientation as part of the assessment, noting in comments that she was "...ALERT AND ORIENTED X 3 AND DENIES ANY DISORIENTATION."

VIII. CONCLUSIONS OF LAW:

- 1) Policy provides that an individual must have five qualifying deficits to be medically eligible for ADW Program services. The WVMi nurse determined, at the time of the PAS, that the Claimant had four qualifying deficits. Testimony from the Claimant proposed three additional deficits in the areas of *bathing*, *wheeling*, and *medication administration*. Testimony regarding *medication administration* described the Claimant as requiring prompting or reminders, not the standard of physical assistance required in this area for a deficit.
- 2) Testimony during the hearing regarding *wheeling* contradicted what the Claimant reported to the assessing nurse at the time of the PAS – specifically, with regard to whether or not the Claimant uses a wheelchair in the home. However, for a deficit in wheeling, policy does not simply require wheelchair usage, but instead both for the Claimant to have been assessed as requiring at least situational assistance with wheeling and as requiring one-person assistance with walking; the Claimant demonstrated neither. The Department correctly assessed the area of *wheeling*.

- 3) Testimony during the hearing regarding *bathing* also contradicted what the Claimant reported to the assessing nurse at the time of the PAS. The Claimant reported to Ms. Hill twice during the PAS assessment that she did not require assistance with bathing, explicitly stating that her caregiver does not help her in this area. During the hearing, both the Claimant and her caregiver testified that she does require assistance with bathing, and that she did not respond correctly to this question at the time because she was not alert because of her medications and sleep habits. This testimony is unconvincing because the Department's nurse assessed the Claimant as fully oriented on the day of the PAS. The Department correctly assessed the area of *bathing*.
- 4) With no additional deficits revealed through testimony or evidence, the Department was correct to terminate the Aged/Disabled Waiver Services of the Claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate the Aged and Disabled Waiver Services of the Claimant based on failure to meet medical eligibility requirements.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of June, 2012.

Todd Thornton
State Hearing Officer