



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

Rocco S. Fucillo
Cabinet Secretary

August 23, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 14, 2012. Your hearing request was based on the Department of Health and Human Resources' decision 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 not meet the medical eligibility requirements of the program.

It is the decision of the State Hearing Officer to uphold the action 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
Aging and Family Services

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1437

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on August 14, 2012, on a timely appeal, filed May 23, 2012.

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.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver program (ADW) 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 ----- Services

-----, Homemaker RN ----- Support Services

-----, Claimant's witness

Kay Ikerd, RN-Bureau of Senior Services (BoSS), Department representative

Sherry Howell, RN-West Virginia Medical Institute (WVMI), Department witness

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 medical eligibility for benefits and services under the Aged and Disabled Waiver program.

V. APPLICABLE POLICY:

Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Chapter 501.5-5.1.5.1.1-Covered Services, Limitations, and Exclusions for Aged and Disabled Waiver Services
- D-2 Pre-Admission Screening assessment dated April 2, 2012
- D-3 Notice of Potential Denial dated April 6, 2012
- D-4 Additional Information dated April 4, 2012
- D-5 Notice of Decision dated May 10, 2012

Claimants' Exhibits:

- C-1 Aged and Disabled Waiver Program Member Assessment dated December 2, 2011 completed by -----, RN*
- C-2 Prescription Pad Note from ----- Pediatrics and Internal Medicine dated April 11, 2012
- C-3 Report from -----, PA-C dated March 13, 2012
- C-4 Letter from -----, RN to WVMi dated April 18, 2012

*This exhibit was entered into the record and given appropriate weight for historical purposes

VII. FINDINGS OF FACT:

- 1) On April 2, 2012, Sherry Howell, RN-West Virginia Medical Institute (WVMI), medically assessed the Claimant to determine her continued eligibility for the Aged and Disabled Waiver (ADW) program using the Pre-Admission Screening (PAS) assessment tool (Exhibit D-2).

- 2) Aged and Disabled Waiver Policy (Exhibit D-1) specifies that “an individual must have five deficits as described on the PAS to qualify medically for the ADW program.”
- 3) Ms. Howell indentified the Claimant’s functional deficits as bathing, grooming, dressing and continence.
- 4) On April 6, 2012, the Claimant was issued a Notice of Potential Denial (Exhibit D-3). 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.

Based on your PAS, you have deficiencies in only 4 areas-bathing, grooming, dressing and continence.

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

- 5) -----, Homemaker RN, submitted a letter (Exhibit C-4) on behalf of the Claimant as additional information. ----- identified the Claimant’s deficiencies with vacating during an emergency, orientation and medication administration. Ms. Howell reviewed the additional information and made no adjustments to the PAS.
- 6) On May 10, 2012, the Claimant was issued a Notice of Decision (Exhibit D-5) 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 4 areas-bathing, grooming, dressing and continence.

- 7) The Claimant's representatives contend that additional deficits should have been awarded in the areas of vacating during an emergency and medication administration.

The following addresses the contested areas:

Vacating during an emergency-The Claimant's representatives contend that the Claimant has a history of falls (Exhibit C-1), communication issues, and anxiety which require calming to focus. The Claimant's representatives purported that the Claimant's receptive and expressive communications issues could be a barrier in an emergency situation and submitted information (Exhibit C-2) from -----, PA-C, which indicates that the Claimant requires assistance to evacuate due to her mental anxiety. Ms. Howell documented in her findings in the assessment as, "Member reports need supervision to vacate in the event of an emergency related to chronic back pain and pain associated with arthritis. Denies needing hands on assistance. According to additional/new information received, states member has periods of confusion and disorientation which member stated to me it was situational." It shall be noted that during the assessment the Claimant was oriented to person, place and time. In reviewing the additional information submitted in the two week timeframe Ms. Howell documented, "Before beginning assessment all present was [sic] given the opportunity [sic] to interject and add their comments during entire assessment. Noted on Reconsiderstion [sic] letter that nurse [-----] states member becomes anxious and in event of emergency and would be mentally unable to vacate. During assessment member showed no signs of disorientation and answered all questions appropriately as asked, and states this episode of disorientation occurred once in the past w/ resolution shortly there after [sic]." Kay Ikerd, RN-BoSS, noted in Claimant's Discharge Summary (Exhibit C-3) that the Claimant's physician noted "Alert and oriented. Chronic anxiety, depression. Moves all 4 to command." Ms. Howell opined that based on the information provided, the Claimant was mentally capable of vacating. Ms. Howell indicated that when an individual requires direction to vacate, they are assessed as requiring supervision and do not meet the criteria for a functional deficit. Ms. Howell opined that the Claimant's anxiety does not make her mentally incapable of exiting her home and indicated that the Claimant was alert and oriented during the assessment and answered all questions and that the Claimant's anxiety does not make her mentally incapable of exiting the home.

Medication Administration-The Claimant's representatives indicated that the Claimant is able to open her medications bottles, but is unsure of her medications or their purposes (Exhibit C-3). -----, Homemaker RN, testified that the Claimant becomes confused when setting up her medications and requires assistance from her daughter. ----- noted in the submitted additional information (Exhibit C-4) that "[Claimant] is able to take her medications on her own as long as someone helps her set them up and read bottles. I have had her show me how to draw up her insulin and give her own shots. She was very hesitant and needed direction throughout the procedure. Recently, she was hospitalized for over-medicating. She led me to believe that she could pour and administer her meds herself, but with return demonstrations, she was unable to do this correctly." Ms. Howell documented her findings in the assessment as, "Member reports

uses weekly pill box that she sets up independently. She reports needing occasional reminders to take her medication. Member reports she is able to put pill into her mouth independently. Observed member opening pill bottle without difficulty.” In response to the additional information, Ms. Howell documented, “Member stated to me that she individually set up all her medication and administered both pills and injections on independent basis, so she was marked as according [sic].” Ms. Howell testified that policy indicates that if an individual is able to put medications in their mouth independently, but requires supervision and reminders due to confusion, the individual is assessed as requiring supervision and a deficit is not awarded. Ms. Howell opined that a deficit is awarded when an individual cannot put medications or draw and inject their own insulin. Ms. Howell testified that she assessed the Claimant as requiring prompting and supervision because the Claimant could place her medications in her mouth and administer her own insulin injections. Kay Ikerd, RN-BoSS, noted in Claimant’s Discharge Summary (Exhibit C-3) that the Claimant’s physician noted “Alert and oriented. Chronic anxiety, depression. Moves all 4 to command.” Ms. Howell opined that based on the information provided, the Claimant was mentally capable of vacating. Ms. Howell indicated that when an individual requires direction to vacate, they are assessed as requiring supervision and do not meet the criteria for a functional deficit.

8) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (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 nursing home level of care.

9) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1– 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 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.

10) 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 requires 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 health areas on the Pre-Admission Screening assessment (PAS).
- 2) During the medical assessment, the Claimant demonstrated functional deficits in 4 areas including bathing, grooming, dressing and continence.
- 3) The matter before the Board of Review is whether or not the assessing nurse correctly assessed the Claimant's functional abilities based on information reported at the time of the assessment. During the assessment, the Claimant reported the need for supervision while vacating, but denied the need for hands on assistance to aide in her ability. During the assessment, the Claimant was alert and oriented; therefore, it's reasonable to assume that the Claimant could follow instructions in the event of an emergency. Policy specifies that supervision is not

considered a deficit; therefore, the assessing nurse correctly assessed the Claimant and an additional deficit for vacating cannot be awarded.

- 4) Evidence revealed that the Claimant was able to administer her own medication with supervision. Because the Claimant presented an ability to administer her own medication, the assessing nurse was correct in her assessment and an additional deficit in the contested area cannot be awarded.
- 5) Evidence presented during the hearing did not reveal any additional deficits; therefore, the Claimant's total number of deficits for medical eligibility is 4 and the Department was correct in its decision to terminate the Claimant's medical eligibility for the Aged and Disabled Waiver program.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to terminate the Claimant's medical eligibility 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 August 2012.

Eric L. Phillips
State Hearing Officer