



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

Rocco S. Fucillo
Cabinet Secretary

August 7, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 7, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your medical eligibility under the Title XIX Aged/Disabled Waiver (ADW) 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 April 24, 2012 Pre-Admission Screening assessment.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate your medical 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
[REDACTED] Case Management

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1512

**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, and was convened on August 7, 2012.

II. PROGRAM PURPOSE:

The Aged/Disabled Waiver Program (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

Kay Ikerd, Department representative

Kathy Gue, Department's witness

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 Department was correct in its decision to terminate the Claimant's medical eligibility for benefits under the Aged/Disabled 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 Excerpts from Aged/ Disabled Home and Community-Based Services Manual Section 501.5
- D-2 Pre-Admission Screening (PAS) assessment completed April 24, 2012
- D-3 Excerpt from PAS assessment completed January 4, 2011
- D-4 Potential Denial Notice
- D-5 Notice of Decision dated May 15, 2012

VII. FINDINGS OF FACT:

- 1) The Claimant was undergoing an annual evaluation of medical eligibility for the Title XIX Aged and Disabled Waiver (ADW) Program during the month of April 2012.
- 2) Kathy Gue, a Registered Nurse (RN) employed by the West Virginia Medical Institute (WVMI), completed a medical assessment (D-2) on April 24, 2012, 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 four (4) deficits on the Pre-Admission Screening (PAS) assessment. The Department stipulated during the hearing that the Claimant established one (1) deficit each in the areas of Vacating, Eating, Dressing, and Grooming.
- 3) Aged/Disabled Home and Community-Based Services Manual Section 501.5 (D-1) – MEMBER ELIGIBILITY, provides in part:

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.
- 4) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (D-1) states in pertinent part:

APS Healthcare/IRG is the contracted entity that is responsibility [sic] for conducting medical necessity assessments to confirm a person's medical eligibility for waiver services.

The purpose of the medical eligibility review is to ensure the following:

- A. New applicants and existing members are medically eligible based on current and accurate evaluations.
 - B. Each applicant/member determined to be medically eligible for ADW services receives an appropriate Service Level that reflects current/actual medical condition and short- and long-term service needs.
 - C. The medical eligibility determination process is fair, equitable and consistently applied throughout the State.
- 5) Aged/Disabled Home and Community-Based Services Waiver Policy Manual 501.5.1.1, (D-1) Medical Criteria, states in pertinent part:

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.

- 6) During the hearing, the RN discussed her findings in each relevant category and explained her reasoning for rating the Claimant in each area. After listening to the RN explain her findings, the Claimant disagreed with her conclusions, and contended that additional deficits should have been awarded in the areas of *Bathing*, *Medication Administration*, *Incontinence*, and *Transferring*.
- 7) In the area of *Bathing*, the Claimant was rated as being able to bathe unassisted and did not receive a deficit. Policy specifies that to receive a deficit in the area of bathing, an individual must require the physical assistance of at least one (1) individual to bathe. The RN recorded the following pertinent information during the assessment:

Bathing: Showers on a shower chair or sponge bath. Denies needing help with washing her body. Says that she “does ok.”

RN Gue stated that she discussed her findings with the Claimant and her Case Manager prior to leaving, and that they were in agreement with the accuracy of the responses.

The Claimant testified that she was not truthful with the RN during the assessment because a male visitor was in her home at the time and she was embarrassed to admit her actual needs. She stated that she was afraid to ask the man to leave because he is sometimes violent. She added that she cannot reach her back to wash and that she questions whether she could use a brush to reach the area because she has a lot of pain in her arms. She added that it is hard to lift her arms at times due to inflammation. She also stated that she needs assistance with drying her body after bathing.

- 8) In the area of *Incontinence*, the Claimant was rated as being continent of both bowel and bladder and did not receive a deficit. Policy specifies that an individual must be totally incontinent of bowel or bladder to receive a deficit in this area. The RN documented the following relevant information during the PAS assessment:

Continence Bowel/Bladder: No incontinence of bladder. No incontinence of bowels. Reports constipation.

The Claimant testified that she misled the RN during the PAS assessment because she was embarrassed. She stated that she has bowel incontinence about three (3) times per week.

- 9) In the area of *Transferring*, the Claimant was rated as being independent with transferring and did not receive a deficit. Policy specifies that to receive a deficit for transferring, an individual must require one or two-person assistance. The RN documented the following on the PAS:

Transferring: Observed the member push herself up and sit on the edge of the desk and ease herself back to the floor when she stood up.

The Claimant stated that she was functioning better on the day of the assessment than she usually does. She stated that can sit on the couch. She added that she gets up without assistance, but does so slowly.

- 10) In the area of *Medication Administration*, the Claimant was rated as being independent with medication administration and she did not receive a deficit. Policy specifies that to receive a deficit for medication administration, an individual must be physically or mentally unable to administer his or her own medications. The RN documented the following pertinent information on the PAS:

Medication Administration: She will take medications from the bottle when they are due.

The Claimant testified that she makes mistakes with her medications and needs assistance in this area. She stated that she also sometimes forgets to take her 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 ADW Program.
- 2) The Claimant received four (4) deficits during the April 2012 PAS assessment, in the categories of *Vacating*, *Eating*, *Grooming*, and *Dressing*. She must be assessed one (1) additional deficit in order to be determined medically eligible for the program. The Claimant contested the ratings she received in the areas of Bathing, Medication Administration, Incontinence, and Transferring
- 3) The evidence and testimony regarding the category of *Bathing* is not sufficient to support the award of a deficit. Policy specifies that an individual must require the physical assistance of at least one (1) individual to receive a deficit in this area. The totality of the evidence supports that although the Claimant reports now that she requires physical assistance to bathe, she did not report this to the Department during the assessment. The Department correctly rated the Claimant in this area based on her observations and the Claimant's responses to questions.
- 4) The evidence and testimony regarding the category of *Incontinence* is insufficient to support the award of a deficit. Policy specifies that an individual must be totally incontinent of bowels or bladder to receive a deficit in this area. The Claimant clearly communicated to the RN during the PAS assessment that she is not incontinent.

- 5) The evidence and testimony regarding the category of *Transferring* is insufficient to support the award of a deficit. Policy specifies that an individual must need at least one-person assistance to receive a deficit in this area. The Claimant did not report the need for physical assistance in this area during her assessment.
- 6) The evidence and testimony regarding the category of *Medication Administration* is insufficient to support the award of a deficit. Policy specifies that an individual must be either physically or mentally unable to administer his or her own medications to receive a deficit in this area. The Claimant reported during the assessment that she was able to administer her own medications without assistance.
- 7) As result of the above conclusions, the Claimant has established no additional deficits, and has not established her continued medical eligibility for the ADW program.
- 8) The Department was correct in its decision to terminate medical eligibility in the ADW program based on the results of the April 2012 PAS assessment.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's medical eligibility under the Title XIX ADW Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of August 2012.

**Cheryl Henson
State Hearing Officer**