



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

September 6, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 30, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the 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 your hearing reveals that you do not meet medical eligibility requirements for the Aged/Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Allied Nursing and Community Services
BoSS
WVMI

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

IN RE: -----,

CLAIMANT,

v.

ACTION NO.: 12-BOR-1570

**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 on August 30, 2012, on an appeal filed June 15, 2012.

It should be noted that the Claimant's benefits have continued pending a hearing decision.

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 son/Branch Manager, ResCare Home Care Services
-----, Case Manager, Allied Nursing and Community Services
-----, RN, ResCare Home Care Services
-----, Homemaker, ResCare Home Care Services
Pam Pushkin, RN, Quality Assurance Monitor, Bureau of Senior Services
Kim Sang, RN, West Virginia Medical Institute

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 501.5, 501.5.1 and 501.5.1.1

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) completed on May 17, 2012
- D-3 Potential Denial Notice dated May 18, 2012
- D-4 Notice of Decision dated June 5, 2012
- D-5 Pre-Admission Screening (PAS) completed on June 24, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of benefits under the Aged/Disabled Waiver Medicaid Program and underwent an annual medical evaluation to determine if he continues to meet medical eligibility criteria for the program.
- 2) West Virginia Medical Institute (WVMI) Registered Nurse Kim Sang completed a Pre-Admission Screening (PAS) medical assessment on May 17, 2012 (D-2), and determined that the Claimant does not meet medical eligibility criteria for the program. The nurse determined that the Claimant exhibits two (2) qualifying functional deficits- physical inability to vacate the building in the event of an emergency and physical assistance with dressing.
- 3) On May 18, 2012, the Department sent the Claimant a Potential Denial Notice (D-3), advising him that he had two weeks to submit additional medical information for consideration.
- 4) The Claimant was sent a final Notice of Decision on June 5, 2012 (D-4).
- 5) The Claimant's homemaker, -----, testified that she prepares the Claimant's bath and assists him in and out of the shower. The Claimant's son, -----, testified that the homemaker primarily helps the Claimant transfer into the shower because he has ankle and knee braces. The

Claimant's son stated that the Claimant has had more falls, and needs physical assistance with transferring and walking due to his unsteady gait.

The WVM Nurse testified that the Claimant reported needing no assistance to bathe or transfer into the shower on the date of the assessment. The nurse indicated that the Claimant was not wearing braces on the date of the assessment. She stated that she observed him transferring out of his electric wheelchair by pushing himself up with his hand, and observed him ambulating independently on the date of the PAS. She indicated, however, that the Claimant does have a walker in the home. The Claimant was rated as being able to walk/transfer with supervision or an assistive device.

The Claimant's son testified that his father has extremely poor hearing and will often just shake his head in agreement when responding to questions. He stated that the Claimant does not provide accurate responses concerning his abilities.

6) 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.

7) Aged/Disabled Home and Community-Based Services Manual Section 501.5.1 (D-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 501.5.1.1 (D-1):

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 B (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 dictates that an individual must receive five (5) deficits on the PAS assessment in order to qualify medically for the Aged/Disabled Waiver Program. The Claimant was awarded two (2) deficits on his May 2012 Aged/Disabled Waiver Program medical evaluation.
- 2) As a result of information provided during the hearing, no additional deficits are awarded to the Claimant. No information was provided to the WVMH Nurse at the time of the assessment to indicate that the Claimant required physical assistance with bathing, and the nurse observed the Claimant transferring and walking without physical assistance on that date.
- 3) As no additional deficits can be awarded, the Claimant continues to lack the required deficits for continued participation in the Aged/Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's benefits under the Aged/Disabled, Title XIX (HCB) Waiver Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of September 2012.

Pamela L. Hinzman
State Hearing Officer