



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

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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  
----- County Committee on Aging

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1582**

**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 June 7, 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  
-----, Homemaker Aide, Select-In Home Care Services  
-----, Case Manager, ----- County Committee on Aging  
-----, Homemaker RN, Select-In Home Care Services  
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 May 13, 2012
- D-3 Notice of Potential Denial dated May 16, 2012
- D-4 Notice of Decision dated June 1, 2012

**Claimants' Exhibits:**

- C-1a Written Testimony
- C-1b Report from -----, M.D. dated July 19, 2012
- C-1c Information from ----- Store January 2011 through August 2012
- C-1d Neurologic Consultation completed by -----, M.D. dated June 27, 2011
- C-1e Claimant's written contention of Pre-Admission Screening
- C-1f Photograph of the entrance to Claimant's home

**VII. FINDINGS OF FACT:**

- 1) On May 13, 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) During the current assessment, Ms. Howell identified no functional deficits for the Claimant.
- 4) On May 16, 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 0 areas

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) On June 1, 2012, the Claimant was issued a Notice of Decision (Exhibit D-4) 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 0 areas.

- 6) The Claimant provided written testimony and rebuttal of the PAS assessment indicating that deficits should have been awarded in the areas of decubitus, vacating, eating, bathing, grooming, dressing, continence, orientation, transferring, walking and medication administration.

The following addresses the contested areas:

**Decubitus**-The Claimant testified that she does not get bed sores, but indicated in her written rebuttal to the PAS (Exhibit C-1E) that her “skin is very dry and thin. [sic] Sometimes get abrasions or excoriations just from sliding over [sic] bed sheet or upholstery on furniture.” Ms. Howell stated that skin abrasions are not considered decubitus ulcers and when evaluating an individual in this area, she considers pressure sores in the decubitus area that range from Stage 1 to 4.

**Vacating**-The Claimant testified that she could get out of her residence if she was downstairs. The Claimant indicated that she sarcastically informed the assessing nurse on the day of the assessment that she could jump from an upstairs window onto her outbuilding if necessary. Ms. Howell documented in the PAS that the Claimant was alert and oriented and that she observed the Claimant ambulate with a steady balance and gait. Based on the assessing nurse’s observations, the Claimant was assessed as independent in regards to her ability to vacate her home in the event of an emergency.

**Eating**-The Claimant stated that she occasionally requires assistance, but can perform the function of eating. The Claimant noted in her written rebuttal (Exhibit C-1E) “actually stated I buy microwaveable stuff for the most part for ease of prep and clean-up.” Ms. Howell documented in the PAS that the Claimant reported she could feed herself without assistance, denied assistance with cutting up food and could prepare her own meals most of the time. Ms. Howell indicated that she assessed the Claimant as a Level 1 Self/Prompting due to the reported information.

**Bathing**-The Claimant stated that she occasionally requires assistance in the contested area. The Claimant noted in her written rebuttal (Exhibit C-1E) “occasionally soak in bathtub, especially if RLS is acting up. I never ask for help, but usually only shower or bath when someone is here with me.” Ms. Howell documented in the PAS that the Claimant “showers and states she holds onto grab bars to get in and out of tub.” Ms. Howell indicated that the Claimant’s use of grab bars to transfer from the bathtub would allow her to be rated as requiring assistance in the area. Based on the information reported during the assessment, the Claimant was assessed as a Level 1 Self/Prompting.

**Grooming**-The Claimant stated that she occasionally requires assistance in the contested area. The Claimant noted in her written rebuttal (Exhibit C-1E) “occasionally needs help with brushing her hair, usually pulls hair to front and only trims.” Ms. Howell documented in the PAS that the Claimant reported that she could brush her teeth, wash her hair, trim her fingernails, comb her hair and cut her hair. Based on the information reported during the assessment, the Claimant was assessed as a Level 1 Self/Prompting.

**Dressing**-The Claimant stated that she occasionally requires assistance in the contested area. The Claimant stated on the day of the assessment, she was wearing a button-up shirt that she could not button. The Claimant noted in her written rebuttal (Exhibit C-1E) that she did not button her outer shirt or jacket and that she can put on a bra independently when she wears one. Ms. Howell indicated that the Claimant reported on the day of the assessment that she could

dress independently, but tried to avoid buttons and zippers. Ms. Howell indicated that she did not have the Claimant elaborate on her use of buttons and zippers at the time of the assessment and rated the Claimant as a Level 1 Self/Prompting in the contested area.

**Continenence**-The Claimant indicated that the question concerning incontinence was presented to her as “when was the last episode in public?” The Claimant stated that she reported one year ago and noted in the written rebuttal (Exhibit C-1E) that she does not go out in public on a “bad bathroom day” and does not use laxatives. Ms. Howell stated that she questioned the Claimant in regards to her bowel incontinence of loss of control and does not have the individual specify what place they experience bowel incontinence. Based on the reported information, the Claimant was assessed as continent of the bowel.

**Orientation**-The Claimant indicated that she has difficulties with her short term memory. Ms. Howell documented that the Claimant was oriented to person, place and time on the day of the assessment and rated the Claimant as Level 1 Oriented.

**Transferring**-The Claimant indicated that she utilizes a cane, but sometimes utilizes her couch or coffee table when transferring. Ms. Howell testified that she observed the Claimant transfer without hands on assistance on the day of the assessment. Ms. Howell stated that she assessed the Claimant as a Level 2 Supervised/Assistive Device and that she can only award a deficit when the individual is assessed as a Level 3 or higher.

**Walking**-The Claimant stated that she has a history of falling due to poor balance. The Claimant noted in her written rebuttal (Exhibit C-1E) that “sometimes do need help, just depends on what kind of day I’m having.” The Claimant’s Homemaker Aide indicated that she occasionally assists the Claimant when ambulating with stairs. Ms. Howell testified that she observed the Claimant ambulate on the day of the assessment without physical assistance or the aid of an assistive device. Ms. Howell stated that she assessed the Claimant as a Level 2 Supervised/Assistive Device and that she can only award a deficit when the individual is assessed as a Level 3 or higher.

**Medication Administration**-The Claimant stated that she administers her own medications with reminders from her Homemaker Aide. Testimony indicated that the Claimant’s Homemaker Aide was not allowed to administer the Claimant’s medication and she provides daily reminders to the Claimant. Ms. Howell testified that she assessed the Claimant as requiring prompting and supervision because the Claimant reported that she could administer medications with reminders.

6) Aged/Disabled Home and Community-Based Services Manual Section 501.5 ( Exhibit 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– 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.

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) 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 no functional deficits.
- 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.
- 4) Policy requires that a deficit is awarded in the area of decubitus ulcers when the ulcer is assessed at a Stage 3 or 4. The Claimant testified that she experiences abrasions due to thin and dry skin. The Claimant did not report pressure sores or decubitus at the time of the assessment; therefore, the assessing nurse correctly assessed the Claimant with no decubitus ulcers and a deficit cannot be awarded.
- 5) Policy requires that a deficit is awarded in the area of vacating during an emergency when the individual is mentally or physically unable to vacate a building. During the assessment, the Claimant was alert, oriented and ambulated without physical assistance. Therefore, the assessing nurse was correct to assess the Claimant as independent in regards to her ability to vacate and a deficit cannot be awarded.
- 6) Policy requires that a deficit is awarded in eating when the individual is assessed at a Level 2 or higher, meaning physical assistance is required to obtain nourishment. Preparation is not considered when awarding a deficit. During the assessment, the Claimant denied requiring assistance with feeding or cutting her foods. Therefore, the assessing nurse was correct to assess the Claimant as a Level 1, in regards to her eating and a deficit cannot be awarded.
- 7) Policy requires that a deficit is awarded in bathing when the individual is assessed at a Level 2 or higher, meaning the individual requires physical assistance. During the assessment, the Claimant indicated the need for assistance with grab bars to transfer in and out of the bathtub. Because the Claimant requires assistance when transferring during bathing, a deficit in the contested area **can** be awarded.
- 8) Policy requires that a deficit is awarded in grooming when the individual is assessed at a Level 2 or higher, meaning the individual requires physical assistance. During the assessment, the Claimant reported an ability to participate in different aspects of grooming and denied

assistance in the contested area. Therefore, the assessing nurse correctly assessed the Claimant as a Level 1 and an additional deficit cannot be awarded.

- 9) Policy requires that a deficit is awarded in dressing when the individual is assessed at a Level 2 or higher, meaning the individual requires physical assistance. During the assessment, the Claimant reported an ability to dress herself independently. Therefore, the assessing nurse correctly assessed the Claimant as a Level 1 and an additional deficit in the contested area cannot be awarded.
- 10) Policy requires that a deficit is awarded in the area of continence when the individual is assessed as a Level 3 or higher or incontinent. During the assessment, the Claimant denied an accidents or loss of control of the bowel or bladder in the last year; therefore, the assessing nurse correctly assessed the Claimant as continent and an additional deficit cannot be awarded.
- 11) Policy requires that a deficit is awarded in the area of orientation when the individual is assessed at a Level 3 or higher meaning they are totally disoriented or comatose. During the assessment, the Claimant was oriented to person, place and time and did not exhibit any disorientation. Therefore, the assessing nurse correctly assessed the Claimant as oriented and an additional deficit in the contested area cannot be awarded.
- 12) Policy requires that a deficit is awarded in the area of transferring when the individual is assessed as a Level 3 or higher, meaning they require one- or two-person assistance to transfer in the home. During the assessment, the Claimant reported the use of a cane to aid in her transferring ability. The assessing nurse observed the Claimant transfer without assistance; therefore, the Claimant was correctly assessed as a Level 2 Supervised/Assistive device and an additional deficit in the contested area cannot be awarded.
- 13) Policy requires that a deficit is awarded in the area of walking when the individual is assessed as a Level 3 or higher, meaning they require one- or two-person assistance to ambulate in the home. During the assessment, the Claimant reported the use of a cane, but denied hands on assistance; therefore, the assessing nurse correctly assessed the Claimant as a Level 2 Supervised/Assistive device and an additional deficit in the contested area cannot be awarded.
- 14) Policy requires that a deficit is awarded in the area of medication administration when the individual is not capable of administering their own medication. Testimony and evidence reveals that the Claimant was able to administer her own medication with prompting and supervision; therefore, the assessing nurse correctly assessed the Claimant as able to administer her own medication and an additional deficit in the contested area cannot be awarded.
- 15) Evidence presented during the hearing revealed one additional deficit. The Claimant's total number of deficits for medical eligibility is one; therefore, 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.**

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**Eric L. Phillips  
State Hearing Officer**