



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 30, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 28, 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 26, 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

Seniors

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

**IN RE:**       -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1585**

**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 28, 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 representative  
-----, Claimant's witness  
-----, Claimant's witness  
-----, Claimant's witness

Pam Pushkin, Department representative  
Angie Hill, 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 26, 2012
- D-3 Potential Denial notice dated April 27, 2012
- D-4 Notice of Decision dated May 15, 2012
- D-5 PAS assessment completed March 24, 2011

**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) Angie Hill, a Registered Nurse (RN) employed with West Virginia Medical Institute (WVMI), completed a medical assessment (D-2) on April 26, 2012, in the Claimant's home, and determined that he no longer met the medical eligibility criteria for the program. The nurse testified that the Claimant received three (3) deficits on the Pre-Admission Screening (PAS) assessment, and the Department stipulated during the hearing that the Claimant established one (1) deficit each in the areas of Vacating a Building, Grooming, and Dressing.
- 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 *Walking, Bathing, Eating, Medication Administration, and Wheeling*.
- 7) In the area of *Walking*, the Claimant was rated as being able to walk with supervision and/or assistive devices. Policy specifies that to receive a deficit in the category of *Walking*, an individual must require the physical assistance of at least one (1) individual to walk. The RN recorded the following pertinent information during the assessment:

Walking: RN observed member is walking independently in the home at this time but he states he uses a cane but states he can walk without it but he just grabs it and uses it. ----- and ----- report ----- has found member in the floor and he has laid [*sic*] there until someone came. --- and ----- reports last time was [approximately] 8 [months] ago and ----- states member was unable to get himself up.

The Claimant's homemaker and uncle, -----, stated that when fluid builds up in the Claimant's knee, he is unable to walk – usually a few days per month. When asked how he assists the Claimant when he is having difficulty walking, he stated that he usually retrieves things for the Claimant when he is with him to keep him from having to walk. He stated that occasionally he will have to “hold him up” when he is in the diminished condition.

The Claimant's aunt, -----, stated that every few months the Claimant's physician removes fluid from his knee and that he is able to walk for a few weeks; but, she added that after the first couple weeks, he is unable to walk without great difficulty until the physician removes more fluid. She stated that the physician only removes the fluid every few months, and that as a result, the Claimant often has much difficulty walking.

Further, she stated that the Claimant has fallen at times in his home. She also stated that when she is in the home with the Claimant, she retrieves things for him so he will not have to walk.

Ms. Hill stated that she documented what she observed and recalled being told on the date of the assessment, and added that she did not recall being told by any of the people present that the Claimant could not walk without physical assistance at times.

- 8) In the area of *Bathing*, the Claimant was rated as being able to bathe unassisted or with prompting and/or supervision. Policy specifies that an individual must require the physical assistance of at least one (1) individual to receive a deficit in this area. The RN documented the following relevant information during the PAS assessment:

Bathing: Member denies needing any assist getting in or out of the shower. ----- states member is suppose to have assist [sic] with getting in and out but ----- states member already has the shower done before he gets there. Member and ----- deny he needs any assist with washing any area of his body.

----- stated that the Claimant needs help getting in and out of the shower. He added that he washes the Claimant's back at times. He stated that he communicated this to the nurse during the assessment; however, the nurse's documentation does not reflect this report. ----- stated that the Claimant became agitated when she tried to explain his needs to the nurse and she did not speak freely during the assessment as a result.

----- stated that she believed, based on comments the Claimant made during the assessment, that the nurse should have questioned his mental capacity in providing accurate answers. She did not fully explain the types of comments to which she was referring, but said that they were inappropriate.

Ms. Hill stated that the Claimant was able to fully extend his arms above his head, reach his lower back, and to touch the tops of his feet from a seated position; therefore, she had no reason to question the statements he provided. In addressing -----'s comments about the Claimant's mental status, she stated that the Claimant's physician did not indicate any diagnoses that might interfere with his ability to provide accurate information during the assessment, and added that she did not recall him making any statements that would have caused her to question his capacity to do so.

- 9) In the area of *Eating*, the Claimant was rated as being independent with eating and he did not receive a deficit. Policy specifies that to receive a deficit for the category of Eating, an individual must require physical assistance to get nourishment – preparation is not considered. The RN documented the following on the PAS:

Eating: Member reports he can feed himself and can cut up his [sic] all of his food himself. ----- agrees he can cut up his food but reports he grinds the meat in a grinder sometimes due to member has trouble

chewing due to poor condition of his teeth.

----- stated that the Claimant feeds himself. He reiterated comments documented by the nurse during the PAS assessment that he grinds meat up for the Claimant due to him being unable to chew.

- 10) In the area of *Medication Administration*, the Claimant was rated as needing prompting and/or supervision and he did not receive a deficit. Policy specifies that to receive a deficit for the category of 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: ----- states he puts members [*sic*] meds in a pillbox and then has to remind member to take his medication due to he forgets. Member states he can administer his eye drops but ----- states if he is there then he will do it for him.

----- stated that he prepares the pill case for the Claimant and reminds him to take the medication. He added that approximately three (3) to four (4) days per week he will not take all of his medication. He acknowledged that the Claimant can take the pills from the container and place them in his mouth unassisted, but added that occasionally he will administer the eye drops for him.

- 11) In the area of *Wheeling*, the Claimant was rated as not utilizing a wheelchair in the home. Policy specifies that to receive a deficit for Wheeling, an individual must require one (1) or more persons to physically assist him. The RN documented the following on the PAS during the assessment:

Wheeling: Member denies any wheelchair use.

----- stated that the Claimant has a wheelchair in his home but refuses to use it. Ms. Connard added that she is not in disagreement with the PAS assessment findings, but added that she is concerned that the Claimant may need more assistance due to his diagnosis of severe osteoarthritis.

### **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 three (3) deficits during the April 2012 PAS assessment, in the categories of *Vacating a Building*, *Dressing*, and *Grooming*. He must be assessed two (2) additional deficits in order to be determined medically eligible for the program. The Claimant contested the ratings he received in the categories of *Walking*, *Bathing*, *Eating*, *Medication Administration*, and *Wheeling*.

- 3) The totality of the evidence and testimony regarding the category of *Walking* is sufficient to support the award of an additional deficit. Policy specifies that an individual must require the physical assistance of at least one (1) individual to receive a deficit in this category. The totality of the evidence supports that the Claimant requires physical assistance to walk at times. The Claimant's family members reported during the assessment that although the Claimant tries to walk with his cane, he has fallen on occasion. The nurse did not explore this claim during the assessment.
- 4) The totality of the evidence and testimony regarding the category of *Bathing* is insufficient to support the award of a deficit. Policy specifies that an individual must require physical assistance to bathe to receive a deficit in this area. The Claimant and his family members clearly communicated to the RN during the PAS assessment that he bathes unassisted. The Department correctly rated the Claimant in this category based on her observations and the Claimant's responses to questions.
- 5) The totality of the evidence and testimony regarding the category of *Eating* is insufficient to support the award of a deficit. Policy specifies that an individual must need at least physical assistance to get nourishment to receive a deficit in this area. Meal preparation is not considered. The Claimant did not report the need for physical assistance in this area during his assessment, and the witnesses testified during the hearing that the Claimant can feed himself. Although the Claimant's food (meat) is reportedly grinded, the witnesses reported this is due to a dental problem.
- 6) The totality of 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 witnesses reported during the assessment that the Claimant is able to administer his own medications once those medications are set up in a pill planner.
- 7) The totality of the evidence and testimony regarding the category of *Wheeling* is insufficient to support the award of a deficit. Policy specifies that an individual must require at least one-person physical assistance to wheel in the home. The Claimant reported during the assessment he does not use a wheelchair in the home; the witnesses during the hearing corroborated this statement.
- 8) As result of the above conclusions, the Claimant has established one (1) additional deficit, and has not established his continued medical eligibility for the ADW program.
- 9) 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 30<sup>th</sup> Day of August 2012.**

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**Cheryl Henson  
State Hearing Officer**