



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

September 19, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 29, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your medical 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 Waiver Program is based on current policy and regulations. Some of these regulations state as follows: The Aged and 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 and Disabled (HCB) Services Manual Section 501]

Information submitted at your hearing reveals that you do not meet the medical eligibility requirements for the Aged and Disabled Waiver Program.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your participation in the Aged and Disabled Waiver Program.

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services
-----, Rescare Home Care, -----, WV

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

IN RE: -----,

Claimant,

v.

ACTION NO: 12-BOR-1645

**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 conducted by telephone conference call on August 29, 2012, on a timely appeal filed June 21, 2012.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (ADW) Program is defined as a long-term care alternative that provides services enabling 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 Husband and Witness
-----, RN, Rescare Home Care, Claimant's Representative
-----, Rescare Home Care, Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Brenda Myers, RN, West Virginia Medical Institute (WVMI), Department's Witness

Presiding at the hearing was Stephen M. Baisden, State Hearing Officer and member of the State Board of Review.

The Hearing Officer placed all participants who gave testimony under oath.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to terminate Claimant's participation in the Aged and Disabled Home and Community-Based Waiver Program based on a yearly Pre-Admission Screening (PAS) conducted on May 23, 2012.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community-Based Services Manual Section 501.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged and Disabled Home and Community-Based Services Manual Section 501.5
- D-2 Pre-Admission Screening (PAS) assessment conducted on May 23, 2012
- D-3 Potential denial letter from APS Healthcare, dated May 29, 2012
- D-4 Notice of Decision dated June 13, 2012

VII. FINDINGS OF FACT:

- 1) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.5.1 (Exhibit D-1), MEDICAL CRITERIA, states in pertinent part:

An individual must have five (5) deficits on the Pre-Admission Screening (PAS), Attachment 14, 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 her/her own medications.

- 2) Claimant was a participant in the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of her continuing participation in the program, a nurse from the West Virginia Medical Institute (WVMI) performed a yearly Pre-Admission Screening (PAS) in her home on May 23, 2012. (Exhibit D-2.)
- 3) Department's Witness, the WVMI nurse who conducted the PAS, testified that the Claimant, Claimant's daughter-in-law, Claimant's grandson (a toddler), and she were present for the PAS. She added that she assessed Claimant with one (1) deficit on the PAS, for grooming, therefore Claimant did not meet the medical eligibility criteria for continuing participation in the Program.
- 4) The Department issued a Notice of Potential Denial dated May 29, 2012. (Exhibit D-3.) This notice stated, "If you believe you have additional information regarding your medical conditions that wasn't considered, please submit those records to WVMI within the next 2 weeks." The PAS does not indicate that Claimant's physician submitted any additional medical information. The Department sent a Notice of Termination/Denial to Claimant on May 3, 2012. (Exhibit D-5.)

- 5) The Claimant's Representative asserted that Claimant should have received five (5) additional deficits on the May 2012 PAS, one on item #25 of the PAS, for vacating a building in the event of an emergency, and four (4) on item #26, for the functional abilities of eating, bathing, dressing and transferring.
- 6) ***Vacating a building in the event of an emergency:*** The WVMi nurse rated Claimant as "with supervision" for this item and wrote in the "Nurse's overall comments" section of the PAS, "Discussed vacating in the event of an emergency and [Claimant] states she believes she could get out of trailer in the event of an emergency. She states she probably would not fool with getting a portable [oxygen] tank and would just leave out of one of the two doors. I discussed her ability to exit out back door that does not have a ramp and she states there are 3 steps out the back door and it has a hand rail and she can physically walk down the steps and use hand rail. Per her functional abilities demonstrated RN does agree that [Claimant] has the physical ability to vacate in the event of an emergency." Claimant's Witness, her husband, testified that Claimant could not vacate her home without assistance in the event of an emergency. He stated that there is an eight to nine inch gap between their back door and back porch of their home, caused by the settling of their mobile home. He stated that this gap would prevent her from walking out the back door during an emergency.
- 7) ***Eating:*** The WVMi nurse rated Claimant at Level 1, "Self/prompting," for this functional ability and wrote in the "Nurse's overall comments" section, "I asked [Claimant] if once food is cooked . . . can she feed herself and cut up her own foods and she states she can do so. I asked if she could cut up firm foods such as steak, chicken, pork chops etc using a knife and fork and she again states she can feed herself and cut up her own foods. She denies that husband or other family members have to cut up food for her once it is prepared." Claimant's husband stated that when he prepares Claimant's meals, he cuts up her meats before he serves them.
- 8) ***Bathing:*** The WVMi nurse rated Claimant at Level 1, "Self/prompting," for this functional ability and wrote in the "Nurse's overall comments" section, "[Claimant] states she showers independently and has a walk-in shower and sits on a shower chair. She states she washes all of her body herself and denies that anyone has to physically help her in or out or wash any part of her body. I asked about washing back and she states she holds wash cloth diagonally across back and washes it that way and can bend over or cross legs at the knee to wash lower legs and feet. She states last year when she first came home from the hospital she was needing help to bathe but she has gotten a lot better and can do it herself now." Claimant's husband stated that Claimant cannot bathe by herself. He stated that when Claimant is having a bad day, he must give her a sponge bath because she cannot get into the shower at all.
- 9) ***Dressing:*** The WVMi nurse rated Claimant at Level 1, "Self/prompting," for this functional ability and wrote in the "Nurse's overall comments" section, "[Claimant] states she dresses herself and does not need any physical assistance to get dressed.

She states she can get shirts on over her head and arms through the sleeves, she sits down and gets pants started over feet and then stands and pulls up pants. She states when she wears socks and shoes she can put them on and picked up one of her tennis shoes from beside her on the floor and showed me they are Sketchers and slip-on. She states she fastens her bra in the front and then turns it to the back. She states she can button and zip clothing items as well if wearing clothes that button or zip.” Claimant’s husband stated that if Claimant is having a bad day, he has to help her with all of her clothing articles. He stated that in order for her to wear pants or socks and shoes, he has to kneel in front of her and guide her feet into her pant legs and shoes.

- 10) ***Transferring:*** The WVMi nurse rated Claimant at Level 2, “Supervised/Assistive Device,” for this functional ability and wrote in the “Nurse’s overall comments” section, “[Claimant] states she transfers independently and demonstrated her ability many times during visit. I asked her about sleeping and she states she has a hospital bed but she sleeps in a regular bed and can get in and out of bed without difficulty or need of physical assistance.” Elsewhere in the “Nurse’s overall comments” section of the PAS, the assessing nurse wrote, “RN observed her several times quickly get up from seated position to get items from young grandchild as one time in particular he had salt shaker and she stood up very quickly and walked over to get it away from him.” Claimant’s husband testified that Claimant always holds onto furniture or the walls of her home when she sits down or stands up.
- 11) Claimant’s Representative stated that on the day of the PAS assessment, Claimant was having a very good day, and on most other days, Claimant does not function as well as she did on May 23, 2012. She stated that Claimant had taken prescription Xanax that day, and the tranquilizer affected her to the extent that she was confused and overestimated her functional abilities. She added that Claimant had forgotten to inform her husband and other family members that the PAS was scheduled for that day, so no one who was familiar with her health and functioning was present. Department’s Witness pointed out that she addressed the issue of how well Claimant was functioning that day, and the PAS reflects this. The “Nurse’s overall comments” section states as follows: “I mentioned the fact she was very mobile and up walking and no [symptoms of shortness of breath] and she states she does feel good today other than having pain in her ankle. She states abilities today are an average day for her.” Department’s Witness stated that she saw no indications that Claimant was mentally confused, over-medicated, or otherwise incapacitated due to ingesting medications. She stated that if she felt that were true, she would have been obligated to discontinue the assessment. She stated that she had years of experience as a nurse in the hospital and home-health settings, and she was confident that she would be able to tell if Claimant was in a confused state of mind due to the taking of Xanax. She added that she based her assessment both on Claimant’s description of her functional abilities and her own observations of the Claimant as she functioned in her home.

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 and Disabled Waiver Program. On her PAS that was performed on May 23, 2012, Claimant was assessed with one deficit.
- 2) The Department was correct in its decision not to assess a deficit in the area of vacating a building in the event of an emergency. The WVMi nurse recorded on the PAS that Claimant walked around her home several times and stated she could get out of the home if an emergency were to arise.
- 3) The Department was correct in its decision not to assess a deficit in the area of eating. The WVMi nurse recorded on the PAS that Claimant reported she could cut up and eat even her firm foods such as meats.
- 4) The Department was correct in its decision not to assess a deficit in the area of bathing. The WVMi nurse recorded on the PAS that Claimant reported she could get into and out of the shower and could clean herself without assistance.
- 5) The Department was correct in its decision not to assess a deficit in the area of dressing. The WVMi nurse recorded on the PAS that Claimant described how she was able to put her clothes on and told her she did not require assistance to dress herself.
- 6) The Department was correct in its decision not to assess a deficit in the area of transferring. The WVMi nurse testified and recorded on the PAS that she witnessed Claimant get up from her chair several times and sit back down again without assistance.
- 7) Claimant's Representative and Witnesses did not provide evidence to support a finding that additional deficits should have been assessed on the May 2012 PAS. Therefore, the required five (5) deficits have not been established to meet medical eligibility criteria for the Aged and Disabled Waiver Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate Claimant's participation in 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 19th Day of September, 2012.

Stephen M. Baisden
State Hearing Officer