



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

October 5, 2012

Dear Ms. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 20, 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
----, RN, ----, [REDACTED] WV

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

IN RE: ----,

Claimant,

v.

ACTION NO: 12-BOR-1754

**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 September 20, 2012, on a timely appeal filed July 9, 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

----, RN, ----, Claimant's Representative

Pamela Pushkin, 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 under oath at the beginning of the hearing.

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 June 18, 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 Notice of Potential Denial, dated June 19, 2012
- D-3 Notice of Decision, dated July 5, 2012
- D-4 Pre-Admission Screening (PAS) assessment conducted on June 18, 2012

VII. FINDINGS OF FACT:

- 1) 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 June 18, 2012. (Exhibit D-2.)
- 2) 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.

- 3) The Department's Witness, the WVMi nurse who conducted the June 18 PAS, testified that the Claimant, Claimant's homemaker and she were present for the assessment session. She added that she assessed Claimant with three (3) deficits on the PAS, for bathing, dressing, and grooming, and therefore Claimant did not meet the medical eligibility criteria for continuing participation in the Program. The Department sent a Notice of Termination/Denial to Claimant on July 5, 2012. (Exhibit D-3.)
- 4) The Claimant's Representative asserted that Claimant should have received three (3) additional deficits on the PAS, for item #25, vacating a building in the event of an emergency, item #26, functional abilities, for (e) and (f) continence, and item #28, medication administration.
- 5) ***Vacating a building in the event of an emergency:*** The WVMi nurse rated Claimant "Independently" on this item and wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] walks independently and at times she

- 6) ***Continence:*** The WVMI nurse rated Claimant at Level 1, “Continent,” for bladder continence and Level 2, “Occasionally Incontinent,” for bowel continence. She wrote in the “Nurse’s overall comments” section, “[Claimant] states she was having more trouble with this in the past and states she does see improvement with this and used to have to wear pull ups often. She states she has not had any accidents with urine or bowel in the past week and then I asked about the previous week and she denies any incontinence last week either and then she asked [homemaker] to make sure she was recalling correctly and [homemaker] nods head and verbalized that it had been at least two weeks for either bowel or bladder incontinence. They talk [*sic*] further and they report 1 bowel accident almost two weeks ago at two o’clock in the morning . . . She denies any urine accidents in the past month.” Claimant’s Representative stated that since April 2012, Claimant has been prescribed continence supplies such as adult disposable diapers, and she uses them regularly. She stated Claimant has periods of time wherein she has more frequent continence accidents and periods of time when her accidents are less frequent. She stated that the PAS took place during a period of time when her accidents were less frequent. Claimant testified that since she had surgery on her back, she has had bowel incontinence problems. Department’s witness stated that she could not determine if Claimant was having more continence accidents now than at the time the PAS was conducted, but that she completes the PAS based on what she observes and is told by the individual. She stated she was told on the day of the PAS that Claimant had not experienced a bladder accident in a month and had a bowel accident in the

- 7) ***Medication Administration:*** The WVMi nurse rated Claimant “With Prompting and Supervision,” at this item and wrote in the “Nurse’s overall comments” section, “[Claimant] states she sets up her meds into weekly planner and [homemaker] will help her do this. She states she is good about remembering to take meds and can place them into her own mouth.” Claimant’s Representative pointed out that the June 2012 PAS reports Claimant’s homemaker helps set up Claimant’s weekly medication planner. She added that due to Claimant’s anxiety and arthritis, she has difficulty setting up her medications, so her homemaker helps her to be sure Claimant has the correct medications and the correct dosages. Department’s Witness stated that prompting and supervision do not count as deficits for this area of the PAS.

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 June 18, 2012, Claimant was assessed with three (3) deficits.
- 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 June 2012 PAS that Claimant reported she could vacate her home during an emergency, and the assessing nurse observed nothing to contradict this information.
- 3) The Department was correct in its decision not to assess a deficit in the area of continence. The WVMi nurse testified and recorded on the June 2012 PAS that Claimant reported no bladder accidents and that the last bowel accident she had experienced was two weeks prior to the assessment date. The Claimant or her homemaker would have to report three or more accidents per week in order to receive a deficit for this functional ability.
- 4) The Department was correct in its decision not to assess a deficit in the area of medication administration. The WVMi nurse testified and recorded on the June 2012 PAS that Claimant reported she needed help to set up her medications in a planner, but she could take them without assistance.
- 5) Claimant’s representative and witnesses did not provide evidence to support a finding that additional deficits should have been assessed on the June 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 5th Day of October, 2012.

**Stephen M. Baisden
State Hearing Officer**