



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

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

February 13, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held on January 25, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to deny your medical eligibility for 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 homes 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 deny your application for 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

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

IN RE: -----,

Claimant,

v.

ACTION NO: 11-BOR-2093

**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 concluded on February 13, 2012 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 conducted by telephone conference call on January 25, 2012, on a timely appeal filed September 20, 2011. This hearing was originally scheduled for November 9, 2011, but was rescheduled at Department's and Claimant's request.

II. PROGRAM PURPOSE:

The Aged and Disabled Waiver (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's Representative
-----, Claimant

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Teena Testa, RN, West Virginia Medical Institute, 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 deny Claimant's application for the Aged and Disabled Home and Community-Based Waiver Program based on a Pre-Admission Screening (PAS) conducted on July 28, 2011.

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 501.3.
- D-2 Pre-Admission Screening (PAS) assessment conducted on July 28, 2011.
- D-3 Potential denial letter from APS Healthcare, dated July 29, 2011
- D-3 Denial letter from APS Healthcare, dated August 12, 2011.

VII. FINDINGS OF FACT:

- 1) Claimant was an applicant for the Aged and Disabled Home and Community-Based Waiver (ADW) Program. As part of the application process, a nurse from the West Virginia Medical Institute (WVMI) performed a Pre-Admission Screening (PAS) in Claimant's home on July 28, 2011. (Exhibit D-2.)
- 2) Aged and Disabled Home and Community-Based Services Waiver Policy Manual Section 501.3.2 (Exhibit 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.

- 3) Department's witness testified that she conducted the PAS (Exhibit D-2) on July 28, 2011 in the Claimant's home. She stated that the Claimant, Claimant's daughter and she were the only persons present for the assessment session. She added that she assessed Claimant with four (4) deficits on the PAS, for vacating a building during an emergency, bathing, grooming and dressing, and therefore Claimant did not meet the medical eligibility criteria for the Program.
- 4) The Department sent the Claimant and Claimant's physician a Notice of Potential Denial dated July 29, 2011. (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 did not indicate that the Department received any additional medical information from Claimant's physician. The Department sent a Notice of Termination/Denial to Claimant on August 12, 2011. (Exhibit D-4.)
- 5) Claimant's representative asserted that Claimant should have received one additional deficit on the July 28 PAS, in the area of administering medications.

- 6) ***Administering Medications:*** On the July 28 PAS (Exhibit D-2) at item #28, “Is the individual capable of administering his/her own medications?” the WVMI nurse assessed the Claimant “with prompting and supervision,” which is not sufficient to award a deficit. She wrote in the “Nurse’s overall comments” section of the PAS, “[Claimant’s daughter] puts [Claimant’s] medications in a container for her.” Department’s witness testified that placing medications into a daily medication planner or dispenser and reminding him or her to take them is not sufficient to award a deficit in this area of the PAS.
- 7) Claimant’s representative stated that she was the primary care-giver for Claimant, but she was not present for the July 28 PAS. She stated that she had to put Claimant’s medication in her hands and she had to put Claimant’s prescribed eye drops in her eyes at night. Department’s representative stated that Claimant’s prescribed medications listed on the July 28 PAS did not include any type of eye drop medication. Department’s witness testified that Claimant’s daughter, who was present for the PAS, showed her all of Claimant’s medications and she listed them on the assessment document. She added that she saw no eye drop medication.

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 July 28, 2011, Claimant obtained four (4) deficits.
- 2) Claimant’s representative argued that one additional deficit should have been assessed in the area of administering medications.
- 3) The Department was correct in its decision not to assess a deficit in the area of administering medications. Claimant’s witness testified that her grandmother could not administer her prescribed eye drops, but Department’s witness testified that during the July 28 PAS, she saw nothing to indicate Claimant took this type of medication.
- 4) Claimant’s representative did not provide testimony or evidence to support a finding that an additional deficit should have been awarded on the assessment; 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 deny Claimant’s application for 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 13th Day of February, 2012.

**Stephen M. Baisden
State Hearing Officer**