



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 23, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 10, 2012. Your hearing request was based on the Department of Health and Human Resources' decision 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
-----, [REDACTED] Community Action Partnership, [REDACTED] WV

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

IN RE: -----,

Claimant,

v.

ACTION NO: 11-BOR-2180

**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 the Common
Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human
Resources. This Fair Hearing was held at the WV DHHR, [REDACTED] County Office in
[REDACTED] WV, with Department's representative and witness appearing by telephone
conference call on February 10, 2012, on a timely appeal filed October 5, 2011. This
hearing originally was scheduled for December 13, 2011, but was rescheduled at the
Claimant's request.

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
-----, [REDACTED] Claimant's Representative
-----, RN, [REDACTED] Claimant's Witness
-----, [REDACTED] Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Brenda Myers, 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 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 August 29, 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 501.5.
- D-2 Pre-Admission Screening (PAS) assessment conducted on August 29, 2011.
- D-3 Pre-Admission Screening (PAS) assessment conducted on September 15, 2010.
- D-4 Potential denial letter from APS Healthcare, dated September 7, 2011.
- D-5 Letter of Diagnosis Confirmation sent to [REDACTED] M.D., on September 2, 2011, and returned on September 7, 2011.
- D-6 Denial letter from APS Healthcare, dated September 28, 2011.

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 August 29, 2011. (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 his/her own medications.

- 3) Department's witness testified that she conducted the PAS (Exhibit D-2) on August 29, 2011 in the Claimant's home. She stated that the Claimant, Claimant's homemaker, Claimant's husband and she were present for the assessment. She added that she assessed Claimant with four (4) deficits on the PAS, for vacating a building during an emergency, bathing, grooming and administering medications, and 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 September 7, 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 indicates that the Department received additional medical information, but this information did not justify the awarding of additional deficits. The Department sent a Notice of Termination /Denial on September 28, 2011. (Exhibit D-6.)
- 5) Claimant's representative asserted that Claimant should have received additional deficits in the areas of eating, dressing and continence.
- 6) **Eating:** The WVMi nurse rated Claimant at Level 1, "Self/Prompting" and wrote in the "Nurse's overall comments" section of the PAS, "[Claimant] states she feeds herself and cuts up her own foods. I asked her if she needed assistance from someone to cut up foods for her once food was cooked and she denies. I asked her if she could use a knife and fork to cut up meats or other firm foods and she said when eating pork chops she will just pick [them] up with her fingers and eat [them] that way and has done so for years and she doesn't care for steak unless it is cube steak and that is cooked tender so she can cut herself. She again denied needing anyone to cut up food for her due to hand strength or vision difficulties . . . I asked [homemaker] if she has to cut up food for member and she denies that she has to cut up food for member." Claimant's representative argued Claimant's indication on the PAS that she prefers cube steak because she can cut it up is indicative that a deficit should be awarded for this functional ability. Department's representative argued that the PAS further states Claimant denied needing someone to cut up her foods due to hand strength or vision difficulties. She also pointed out that the PAS indicates Claimant's homemaker denied having to cut up foods for Claimant.
- 7) **Dressing:** The WVMi nurse rated the Claimant at a Level 1, "Self/prompting," and wrote in the "Nurse's overall comments" section, "[Claimant] states she can dress independently. She states it takes some effort but she dresses herself and tells me she can get tops on either pull over or button tops and can button buttons if needed. [Homemaker] agreed and acknowledged to me that [Claimant] dresses herself." Claimant's representative stated that Claimant cannot put on her shoes and stockings without assistance. Claimant's witness, her Homemaker-RN from [REDACTED] testified that she did an assessment in July 2011, and at that time Claimant reported that she could not put on her stockings alone, that she could only wear slip-on shoes, and that she could not put on slip-on shoes without assistance if her feet were swollen. Department's witness, the WVMi nurse who completed the August 2011 PAS, testified that both Claimant and her homemaker stated clearly that Claimant could dress herself without assistance.
- 8) **Continence:** The WVMi nurse rated Claimant at Level 1, "Continent," and wrote, "[Claimant] denies any incontinence with her bowels or bladder. She denies use of incontinent supplies. I specifically asked if she had accidents . . . and she denies."

Claimant's representative argued that Claimant had "the occasional bladder and bowel accident." She added that she knew Claimant had to be rated at Level 3, "Incontinent" and occasional incontinence is not sufficient to warrant assessing her with a deficit, but that assessing Claimant to be completely continent is not accurate. Department's witness, Claimant's Homemaker-RN, testified that Claimant reported during [REDACTED] [REDACTED] July 2011 assessment she had occasional incontinence, but she did not indicate the frequency of these accidents.

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/Disabled Waiver Program. On her PAS that was performed on August 29, 2011, Claimant obtained four (4) deficits.
- 2) The Department was correct in its decision not to assess a deficit in the area of eating. Department's witness testified and recorded on the PAS that Claimant and her homemaker denied that someone had to cut up Claimant's meats due to hand-strength or vision problems.
- 3) The Department was correct in its decision not to assess a deficit in the area of dressing. Department's witness testified and recorded on the PAS that Claimant and her homemaker reported Claimant could dress herself.
- 4) The Department was correct in its decision not to assess a deficit in the area of continence. Department's witness testified and recorded on the PAS that Claimant denied being incontinent or purchasing and/or using incontinence supplies. Claimant's representative argued that Claimant was "occasionally incontinent," which does not meet the policy criterion for a deficit in this functional ability.
- 5) Neither Claimant, her representative nor her witnesses provided testimony or evidence to support a finding that additional deficits should have been awarded in 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 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 23rd Day of February, 2012.

**Stephen M. Baisden
State Hearing Officer**